



# Local Government and Housing Act 1989

## 1989 CHAPTER 42

### PART IV

#### REVENUE ACCOUNTS AND CAPITAL FINANCE OF LOCAL AUTHORITIES

##### *Introductory*

### **39 Application of Part IV**

- (1) For financial years beginning on or after 1st April 1990, this Part has effect with respect to the finances of the following authorities (in this Part referred to as “local authorities”)—
- (a) a county council;
  - (b) a district council;
  - (c) a London borough council;
  - (d) the Common Council of the City of London;
  - (e) the Council of the Isles of Scilly;
  - (f) an authority established under section 10 of the Local Government Act 1985 (waste disposal authorities);
  - (g) a joint authority established by Part IV of that Act (police, fire services, civil defence and transport);
  - (h) a joint or special planning board constituted for a National Park by an order under paragraph 1 or paragraph 3 of Schedule 17 to the Local Government Act 1972;
  - (i) the Broads Authority;
  - (j) a combined police authority established by an amalgamation scheme under the Police Act 1964; and
  - (k) any other body prescribed by regulations under subsection (3) below.
- (2) The reference in subsection (1)(d) above to the Common Council of the City of London is a reference to that Council in their capacity as a local authority, a police authority or a port health authority.

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- (3) The Secretary of State may by regulations prescribe for the purposes of subsection (1) (k) above any body which is (or any class of bodies each of which is)—
- (a) a levying body, within the meaning of section 74 of the Local Government Finance Act 1988;
  - (b) a body to which section 75 of that Act applies (bodies having power to issue special levies);
  - (c) a body to which section 118 of that Act applies; or
  - (d) a precepting authority, as defined in section 144(2) of that Act.
- (4) Regulations under subsection (3) above may provide that, in relation to a body prescribed by the regulations, the following provisions of this Part shall have effect subject to such modifications as may be specified in the regulations.
- (5) For the purposes of the application of this Part, the Secretary of State may by order make provision for treating things done by or to—
- (a) a company which, in accordance with Part V of this Act, is under the control of a local authority, or
  - (b) a company which, in accordance with that Part, is for the time being subject to the influence of an authority, or
  - (c) a trust to which, by virtue of an order under section 72 below, the provisions of section 69 below are applicable, or
  - (d) a Passenger Transport Executive and any company which, in accordance with that Part, is either under the control or for the time being subject to the influence of such an Executive,
- in such cases and to such extent as may be provided in the order as if they were done by or to the local authority specified or determined in accordance with the order; and, where an order so provides in relation to a local authority, that authority together with any companies and Executive concerned are in subsection (6) below referred to as members of a local authority group.
- (6) Without prejudice to the generality of subsection (5) above, an order under that subsection—
- (a) may provide for the application of the provisions of this Part to the members of a local authority group subject to such modifications as may be specified in the order;
  - (b) may make provision as to the way in which dealings between members of a local authority group and changes in the capitalisation or capital structure of any company in a local authority group are to be brought into account for the purposes of this Part; and
  - (c) may contain such incidental, supplementary and transitional provisions as the Secretary of State considers appropriate.
- (7) The power to make an order under subsection (5) above—
- (a) shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament; and
  - (b) may make different provision in relation to different cases or descriptions of case.
- (8) This Part has effect in place of the provisions of Part VIII of the Local Government, Planning and Land Act 1980.

## **40 Capital purposes**

- (1) References in this Part to expenditure for capital purposes shall be construed in accordance with this section.
- (2) Subject to subsections (5) and (6) below, the following expenditure (relating to tangible assets) is expenditure for capital purposes, namely, expenditure on—
  - (a) the acquisition, reclamation, enhancement or laying out of land, exclusive of roads, buildings and other structures;
  - (b) the acquisition, construction, preparation, enhancement or replacement of roads, buildings and other structures; and
  - (c) the acquisition, installation or replacement of movable or immovable plant, machinery and apparatus and vehicles and vessels.
- (3) For the purposes of subsection (2) above, “enhancement”, in relation to any asset, means the carrying out of works which are intended—
  - (a) to lengthen substantially the useful life of the asset; or
  - (b) to increase substantially the open market value of the asset; or
  - (c) to increase substantially the extent to which the asset can or will be used for the purposes of or in connection with the functions of the local authority concerned;but expenditure on the enhancement of an asset shall not be regarded as expenditure for capital purposes unless it should be so regarded in accordance with proper practices.
- (4) Subject to subsection (5) below, the following expenditure, in so far as it is not expenditure on approved investments, is expenditure for capital purposes, namely, expenditure on—
  - (a) the making of advances, grants or other financial assistance to any person towards expenditure incurred or to be incurred by him on the matters mentioned in paragraphs (a) to (c) of subsection (2) above or on the acquisition of investments; and
  - (b) the acquisition of share capital or loan capital in any body corporate.
- (5) The Secretary of State may by regulations provide—
  - (a) that expenditure which, apart from the provision made by the regulations, would not be expenditure for capital purposes shall be such expenditure; or
  - (b) that expenditure which, apart from the provision made by the regulations, would be expenditure for capital purposes shall not be such expenditure.
- (6) Notwithstanding anything in the preceding provisions of this section, if the Secretary of State so directs, expenditure which—
  - (a) is of a description or for a purpose specified in the direction, and
  - (b) has been or is to be incurred by a particular local authority, and
  - (c) does not exceed such amount as is specified in the direction, and
  - (d) was or will be incurred during a period specified in the direction,may be treated by the authority concerned as expenditure for capital purposes.

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*Charge of expenditure to revenue accounts*

**41 Expenditure to be charged to revenue account**

- (1) All expenditure incurred by a local authority, other than expenditure excluded by section 42 below, must be charged to a revenue account of the authority and unless, in accordance with proper practices (exclusive of this subsection), it is appropriate to charge some or all of any particular item of expenditure to a revenue account for an earlier or a later financial year, the expenditure shall be charged to a revenue account of the authority for the year in which it is incurred.
- (2) In relation to a local authority, any reference to a revenue account is a reference to one of the following accounts for a financial year of the authority, namely—
  - (a) a revenue account which the authority are required to keep by virtue of any enactment;
  - (b) a revenue account which the authority are required to keep in order to comply with proper practices; or
  - (c) any other revenue account which the authority decide to keep in accordance with proper practices.
- (3) The reference in subsection (1) above to expenditure incurred by a local authority in any financial year includes the following (whether or not giving rise to actual payments)—
  - (a) any amount which does not form part of the authority's capital receipts and which is set aside for the year by the authority as provision to meet credit liabilities, otherwise than by virtue of any of subsections (2) to (4) of section 63 below; and
  - (b) any other amount which is set aside for the year by the authority as reasonably necessary for the purpose of providing for any liability or loss which is likely or certain to be incurred but is uncertain as to the amount or the date on which it will arise (or both);and the reference in subsection (5) below to expenditure incurred by a local authority shall be construed in accordance with this subsection.
- (4) Subsection (2) above has effect not only for the purposes of this Act but also for the purposes of—
  - (a) any enactment passed after or in the same Session as this Act; and
  - (b) any earlier enactment which is amended by this Act or by any such enactment as is referred to in paragraph (a) above.
- (5) Nothing in this section or the following provisions of this Part shall permit an authority to charge to a revenue account which they are required to keep by virtue of Part VI of this Act or any other enactment any expenditure incurred by a local authority which could not otherwise be so charged.

**42 Expenditure excluded from section 41(1)**

- (1) Expenditure falling within subsection (2) below is excluded from the obligation in section 41(1) above but, if it is consistent with proper practices and the authority so wish, any such expenditure may be charged to a revenue account of the authority for the financial year in which it is incurred or an earlier or later financial year.

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- (2) Subject to subsection (4) below, the expenditure referred to in subsection (1) above is as follows—
- (a) expenditure arising from the discharge of any liability of the authority under a credit arrangement, other than an arrangement excluded by regulations under paragraph 11 of Schedule 3 to this Act;
  - (b) expenditure arising from the discharge of any liability of the authority in respect of money borrowed by the authority, other than a liability in respect of interest;
  - (c) expenditure which, in reliance on a credit approval, the authority have determined under section 56(1)(a) below is not to be chargeable to a revenue account of the authority;
  - (d) expenditure on making approved investments;
  - (e) expenditure consisting of the application or payment of capital receipts as mentioned in subsections (7) to (9) of section 59 below;
  - (f) expenditure which is met out of the usable part of capital receipts, in accordance with section 60(2) below;
  - (g) expenditure for capital purposes which the authority determine is, or is to be, reimbursed or met out of money provided, or to be provided, by any other person, excluding grants from a Community institution;
  - (h) expenditure in respect of payments out of a superannuation fund which the authority are required to keep by virtue of the Superannuation Act 1972; and
  - (i) expenditure in respect of payments out of a trust fund which is held for charitable purposes and of which the authority are a trustee.
- (3) A determination under subsection (2)(g) above may not be made later than 30th September in the financial year following that in which the expenditure in question is incurred.
- (4) Regulations made by the Secretary of State may amend subsection (2) above—
- (a) by adding a description of expenditure specified in the regulations to the expenditure falling within that subsection; or
  - (b) by removing a description of expenditure specified in the regulations from the expenditure falling within that subsection (whether the expenditure so specified was within that subsection as originally enacted or was added by virtue of this subsection).
- (5) Where, by virtue of subsection (1) above, expenditure of any description is excluded from the obligation in section 41(1) above, it shall also be excluded from any requirement arising under any enactment (including an enactment in Part VI of this Act) under which the expenditure is required to be charged to a revenue account or any particular revenue account; but if—
- (a) an authority decide that expenditure of that description should be charged to a revenue account as mentioned in subsection (1) above, and
  - (b) under any such requirement that expenditure (apart from this subsection) would have to be charged to a particular revenue account,
- that expenditure may be charged only to that revenue account.

## *Borrowing*

### **43 Borrowing powers**

- (1) Subject to the following provisions of this Part, as part of the proper management of their affairs, a local authority may borrow money for any purpose relevant to their functions under any enactment.
- (2) Except with the approval of the Secretary of State given with the consent of the Treasury, a local authority may not borrow money in any manner other than—
  - (a) by overdraft or short term from the Bank of England or from a body or partnership which, at the time the borrowing is undertaken, is an authorised institution within the meaning of the Banking Act 1987; or
  - (b) from the National Debt Commissioners or from the Public Works Loan Commissioners; or
  - (c) by means of a loan instrument;
 and in paragraph (a) above borrowing “short term” shall be construed in accordance with section 45(6) below.
- (3) In the exercise of the powers conferred by paragraphs (a) to (c) of subsection (2) above, a local authority may not, without the consent of the Treasury, borrow from a lender outside the United Kingdom or otherwise than in sterling.
- (4) Subject to any provision made by regulations under subsection (5) below, for the purposes of this Part, a loan instrument is any document which, directly or by reference to any other document,—
  - (a) contains an acknowledgment (by the borrower, the lender or both) that a loan has been made to the local authority concerned or that, in connection with the provision of funds to the authority, a payment or repayment is due from the authority; and
  - (b) states the dates on which the authority are to make payments or repayments; and
  - (c) states the amount of each of those payments or repayments or the method by which that amount is to be calculated; and
  - (d) specifies the means, if any, by which the rights or obligations under the instrument are transferable; and
  - (e) except in the case of an instrument which is transferable by delivery, specifies the name or description of the person to whom payments or repayments are due; and
  - (f) in the case of an instrument issued by two or more local authorities acting jointly, states what proportion of the payments or repayments due are the responsibility of each of the authorities concerned.
- (5) With the consent of the Treasury, the Secretary of State may make regulations—
  - (a) regulating the terms of loan instruments and the manner of their issue, transfer or redemption;
  - (b) restricting the issue of instruments which are transferable by delivery;
  - (c) regulating the manner in which any payments or repayments are to be made to the holder of the instrument; and
  - (d) making provision for the custody and, where appropriate, eventual destruction of documents relating to loan instruments;

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and any document which, at the time it comes into being, does not comply with any provision then made under paragraphs (a) to (c) above is not a loan instrument for the purposes of this Part.

- (6) Any approval given by the Secretary of State under subsection (2) above and any consent given by the Treasury under subsection (3) above may be given generally or in a particular case or to authorities of a particular description or by reference to borrowing or securities of a particular description and may be given subject to conditions.
- (7) In so far as any local authority have power under any private or local Act to borrow money (whether for general or specific purposes), any such power shall cease to have effect for financial years beginning on or after 1st April 1990.
- (8) Subject to subsection (7) above, subsections (2) to (6) above apply to all borrowing powers for the time being available to a local authority under any enactment, whenever passed.

#### **44 Borrowing limits etc**

- (1) A local authority may not at any time borrow an amount which would cause the total of—
  - (a) the amount outstanding at that time by way of principal of money borrowed by the authority, and
  - (b) the aggregate cost (as determined below) at that time of the credit arrangements entered into by the authority, other than arrangements excluded by regulations under paragraph 11 of Schedule 3 to this Act,to exceed the aggregate credit limit for the time being applicable to the authority by virtue of section 62 below.
- (2) The Secretary of State may by regulations make provision, in the interests of prudent financial management, regulating borrowing by local authorities; and a local authority may not borrow to any extent or in any manner which would contravene any provision of the regulations.
- (3) A local authority may not borrow any amount which would cause any limit for the time being determined by the authority under section 45 below to be exceeded.
- (4) References in this section and sections 45 to 47 below to borrowing by an authority are references to borrowing not only under section 43 above but also under any other power for the time being available to the authority under any enactment, whenever passed.
- (5) For the purposes of subsection (1) above, the temporary use by a local authority for a purpose other than that of the fund in question of money forming part of such a superannuation fund or trust fund as is referred to in paragraph (h) or paragraph (i) of subsection (2) of section 42 above shall be treated as borrowing.
- (6) A person lending money to a local authority shall not be bound to enquire whether the authority have power to borrow the money and shall not be prejudiced by the absence of any such power.

#### **45 The authority's own limits**

- (1) For the purposes of this Part, for each financial year every local authority shall determine—
  - (a) an amount of money (in this Part referred to as “the overall borrowing limit”) which is for the time being the maximum amount which the authority may have outstanding by way of borrowing;
  - (b) an amount of money (in this Part referred to as “the short-term borrowing limit”), being a part of the overall borrowing limit, which is for the time being the maximum amount which the authority may have outstanding by way of short term borrowing; and
  - (c) a limit on the proportion of the total amount of interest payable by the authority which is at a rate or rates which can be varied by the person to whom it is payable or which vary by reference to any external factors.
- (2) Subject to subsection (3) below, the duty to determine the limits referred to in subsection (1) above shall be performed before the beginning of the financial year to which the limits are to relate.
- (3) Where a local authority have determined a limit for a financial year under subsection (1) above, the authority may at any time (whether before or after the beginning of that year) vary that limit by making a new determination thereof.
- (4) Section 101 of the Local Government Act 1972 (arrangements for discharge of functions of local authorities by committees, officers etc.) shall not apply to the duty to make a determination under subsection (1) above of any limit or to the power to vary a limit under subsection (3) above.
- (5) Without prejudice to subsection (4) above, in section 101(6) of the Local Government Act 1972 (which provides that certain functions, including borrowing, shall be discharged only by the authority) the words “or borrowing money” shall be omitted.
- (6) For the purposes of subsection (1)(b) above, a local authority borrow money short term if the sum borrowed is repayable—
  - (a) without notice; or
  - (b) at less than twelve months notice; or
  - (c) within twelve months of the date of the borrowing.

#### **46 Register of loan instruments and certain existing loans**

- (1) Every local authority shall maintain a register giving particulars of all the loans in respect of which loan instruments are issued by or to the authority on or after 1st April 1990 and, if they think it appropriate, a local authority may appoint as a registrar for some or all of the purposes of such a register a person who is neither an officer nor any other employee of the authority.
- (2) In the register required to be maintained by a local authority under this section, the authority shall, not later than 30th September 1990, enter particulars of all outstanding loans in respect of which any payment or repayment falls to be made by the authority (whether or not any loan instruments have been issued), other than those resulting from borrowing as mentioned in paragraph (a) or paragraph (b) of subsection (2) of section 43 above; and, for this purpose, an “outstanding loan” is one which was made before 1st April 1990 and in respect of which any payment or repayment falls to be made on or after that date.

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- (3) Subject to the following provisions of this section, a register required to be maintained under this section shall be in such form as the authority concerned consider appropriate; but that form must be such that the register is, or is capable of being reproduced, in legible form.
- (4) A register maintained under this section shall contain, with respect to each loan of which particulars are required to be registered,—
  - (a) except in the case of a loan in respect of which there has been issued an instrument (whether or not being a loan instrument) transferable by delivery, the name or description, and the address, of the person to whom payments or repayments are due;
  - (b) the dates on which the payments or repayments are to be made; and
  - (c) the amount of each of those payments or repayments or the method by which that amount is to be calculated.
- (5) A local authority may remove from a register maintained under this section particulars of any loan in respect of which no more payments or repayments fall to be made.
- (6) With the consent of the Treasury, the Secretary of State may make regulations—
  - (a) generally with respect to the keeping of a register required to be maintained under this section;
  - (b) modifying all or any of the particulars specified in paragraphs (a) to (c) of subsection (4) above; and
  - (c) specifying additional particulars which are to be entered in a register maintained under this section.
- (7) A copy of an entry in a register maintained under this section which is certified by a registrar of the register and purports to show particulars entered pursuant to subsection (4) or subsection (6) above shall be prima facie evidence of the matters specified in the entry.
- (8) A certification by a registrar of a register maintained under this section of any instrument of transfer of a loan instrument is to be taken as a representation by him to any person acting on the faith of the certification that there have been produced to the registrar such documents as on their face show a prima facie title to the loan instrument in the transferor named in the instrument of transfer; but such a certification shall not be taken as a representation that the transferor has any title to the loan instrument.
- (9) If—
  - (a) the name of any person is, without sufficient cause, entered in or omitted from a register maintained under this section, or
  - (b) default is made or unnecessary delay takes place in making any entry required to be made in such a register,the person aggrieved may apply to the High Court or a county court for rectification of the register.
- (10) Where an application is made under subsection (9) above, the court—
  - (a) may refuse the application or order rectification of the register;
  - (b) may decide any question relating to the title of a person who is a party to the application to have his name entered in or omitted from the register; and
  - (c) generally may decide any question necessary or expedient to be decided for rectification of the register.

#### **47 Security for money borrowed etc**

- (1) All money borrowed by a local authority (whether before or after the coming into force of this section), together with any interest thereon, shall be charged indifferently on all the revenues of the authority.
- (2) Subject to subsection (3) below, all securities created by a local authority shall rank equally without any priority.
- (3) Subsection (2) above does not affect any priority existing at, or any right to priority conferred by a security created before, 1st June 1934.
- (4) If at any time any principal or interest due in respect of any borrowing by a local authority remains unpaid for a period of two months after demand in writing, then, subject to subsection (5) below, the person entitled to the sum due may, without prejudice to any other remedy, apply to any court having jurisdiction in respect of a claim for that sum for the appointment of a receiver; and, if it thinks fit, the court may appoint a receiver on such terms and with such powers as the court thinks fit.
- (5) No application may be made under subsection (4) above unless the sum due in respect of the borrowing concerned amounts to not less than £5,000 or such other amount as may from time to time be prescribed for the purposes of this subsection by regulations made by the Secretary of State.
- (6) The court to whom an application is made under subsection (4) above may confer upon the receiver any such powers of collecting, receiving and recovering the revenues of the local authority and of issuing levies and precepts and setting, collecting and recovering community charges as are possessed by the local authority.
- (7) Except as provided by subsection (1) above, a local authority may not mortgage or charge any of their property as security for money borrowed or otherwise owing by them; and any security purporting to be given in contravention of this subsection shall be unenforceable.

#### *Credit arrangements*

#### **48 Credit arrangements**

- (1) Subject to the following provisions of this section, a local authority shall be taken for the purposes of this Part to have entered into a credit arrangement—
  - (a) in any case where they become the lessees of any property (whether land or goods); and
  - (b) in any case (not falling within paragraph (a) above) where, under a single contract or two or more contracts taken together, it is estimated by the authority that the value of the consideration which the authority have still to give at the end of a relevant financial year for or in connection with the provision to the authority of any land, goods or services or any other kind of benefit is greater than the value of the consideration (if any) which the authority were still to receive immediately before the beginning of that financial year; and
  - (c) in any case where the authority enter into a transaction of a description for the time being prescribed for the purposes of this section by regulations made by the Secretary of State;

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and, in any such case, the “credit arrangement” is the lease, the single contract or, as the case may be, the two or more contracts taken together.

- (2) The estimate required to be made under paragraph (b) of subsection (1) above shall be made at the time the contract or, as the case may be, the later or last of the contracts constituting the credit arrangement is entered into; and the reference in that paragraph to a relevant financial year is a reference to a financial year which begins after the contract or, as the case may be, the first of the contracts constituting the arrangement was entered into.
- (3) Subject to section 52 below, references in this Part, other than this section, to a credit arrangement do not apply to a credit arrangement which comes into being before 1st April 1990; and for the purpose of this Part a credit arrangement comes into being—
  - (a) where subsection (1)(a) above applies, at the time the local authority become the lessees;
  - (b) where subsection (1)(b) above applies, at the time the contract or, as the case may be, the later or latest of the contracts constituting the arrangement is entered into; and
  - (c) where subsection (1)(c) above applies, at the time the authority enter into the transaction concerned or such other time as may be specified in the regulations concerned.
- (4) Where a contract constitutes, or two or more contracts taken together constitute, a credit arrangement, no account shall be taken under this section of any later contract which has the effect of varying the effect of the contract or, as the case may be, of the two or more contracts taken together.
- (5) A contract is not a credit arrangement to the extent that it is a contract under which a local authority borrows money; and a lease or contract which is excluded from this section by regulations made by the Secretary of State is not a credit arrangement.
- (6) It is immaterial for the purposes of this section whether the consideration given or received by a local authority under any contract is given to or received from the person by whom the land, goods, services or other benefit are in fact provided to the authority; and for the purposes of this section, and any of the following provisions of this Part relating to credit arrangements, in any case where the consideration under a contract consists, in whole or in part,—
  - (a) of an undertaking to do or to refrain from doing something at a future time (whether specified or not), or
  - (b) of a right to do or to refrain from doing something at such 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.
- (7) Where the consideration under a contract consists, in whole or in part, of an option, the estimate required to be made under subsection (1)(b) above shall be made—
  - (a) on the assumption that the option will be exercised or, if the option could be exercised in different ways, on the assumption that it will be exercised in each of those ways, and
  - (b) on the assumption that the option will not be exercised,and if, on any of those assumptions, the contract would on those estimates constitute, alone or together with one or more other contracts, a credit arrangement, it shall be regarded as doing so regardless of whether the option is or is not in fact exercised;

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and in this subsection “option” includes any right which is exercisable or not at the discretion of a party to the contract.

- (8) If an existing contract is varied and the variation does not in law itself constitute a contract, it shall be regarded as such for the purposes of this section and, accordingly, subject to subsection (4) above, the existing contract and the variation shall be regarded as two contracts to be taken together.

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

- (1) Subject to subsection (3) and section 52 below, for the purposes of this Part the initial cost of a credit arrangement is the amount which, at the time the arrangement comes into being, the local authority estimate will be the aggregate of—
- (a) any consideration which falls to be given by the authority under the arrangement in the financial year in which it comes into being; and
  - (b) the value of the consideration falling to be given by the authority under the arrangement in any subsequent financial year, determined in accordance with subsection (2) below.
- (2) For each subsequent financial year referred to in subsection (1)(b) above, 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 amount of the consideration which the authority estimate will be given by them under the arrangement in that financial year;

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

“n” is the financial year in which the consideration falls to be given expressed as a year subsequent to the financial year in which the arrangement came into being (so that the first of the subsequent financial years is 1, the next financial year is 2, and so on).

- (3) Subsection (2) above does not apply to a credit arrangement of a description excluded from that subsection by regulations made by the Secretary of State; and, in relation to a credit arrangement which is so excluded, regulations so made shall make provision for the method of calculating the initial cost and the cost of the arrangement at any time.
- (4) Subject to subsection (3) above and sections 51 and 52 below, the cost of a credit arrangement at any time after it has come into being shall be determined in accordance with subsections (1) and (2) above (in like manner as the determination of the initial cost) but on the basis of an estimate made at the time in question and leaving out of account any consideration which has been given by the authority under the arrangement before that time.
- (5) In the application of this section to a credit arrangement which consists, in whole or in part, of a contract, the consideration under which falls within subsection (7) of section 48 above,—

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- (a) if the credit arrangement exists only on the basis of one of the assumptions in that subsection, the local authority shall make that assumption for the purposes of this section; and
- (b) if the credit arrangement would exist on the basis of any two or more of those assumptions, the authority shall for the purposes of this section make whichever of those assumptions seems to them most likely.

## **50 Limits on powers to enter into credit arrangements**

- (1) A local authority may not enter into a credit arrangement for any purpose unless, if they incurred expenditure for that purpose, it would be expenditure for capital purposes, and any reference in the following provisions of this Part to “capital purposes”, in relation to a credit arrangement, shall be construed accordingly.
- (2) A local authority may not enter into a credit arrangement unless, at the time the arrangement comes into being, there is available to the authority an amount of credit cover equal to the initial cost of the arrangement.
- (3) For the purposes of this section, each of the following amounts constitutes, in relation to a credit arrangement, an amount of credit cover available to a local authority,—
  - (a) an amount for the time being authorised by a credit approval issued to the authority;
  - (b) an amount of the usable part of capital receipts which, in accordance with a determination under section 60(2) below referring to the arrangement, is applied by the authority as provision to meet credit liabilities; and
  - (c) an amount which, in accordance with a determination of the authority referring to the arrangement, is set aside from a revenue account by the authority as provision to meet credit liabilities (being an amount over and above what they are required so to set aside by virtue of any other provision of this Part).
- (4) A local authority may not enter into a credit arrangement at any time if to do so would at that time cause the total referred to in section 44(1) above to exceed the aggregate credit limit for the time being applicable to the authority by virtue of section 62 below.
- (5) A determination under subsection (3)(c) above may not be made later than 30th September in the financial year following that in which falls the time when there comes into being the credit arrangement for which the credit cover is made available.
- (6) Except in so far as they are applied by section 52 below, the preceding provisions of this section do not apply in relation to a transitional credit arrangement.

## **51 Variation of credit arrangements**

- (1) This section (other than subsection (10) below) applies where the terms of a credit arrangement entered into by a local authority are varied (whether by the making of a new contract or otherwise) in such a way that, if the effect of the variation had been part of the arrangement at the time it came into being, the initial cost would have been greater than it was.
- (2) If, in the case of a credit arrangement falling within subsection (5) of section 49 above,
  - (a) the option in question is exercised in a way different from that which was assumed for the purposes of that section, or

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- (b) it was assumed for the purposes of that section that the option in question would not be exercised but it is in fact exercised,
- the exercise of the option shall be regarded for the purposes of this section as a variation of the terms of the credit arrangement; and if, in such a case, it was assumed for the purposes of section 49 above that the option would be exercised (or would be exercised in a particular way) and it subsequently appears to the local authority that it will not in fact be exercised, the option shall be assumed to have been abandoned and that abandonment shall be regarded for the purposes of this section as a variation of the terms of the credit arrangement.
- (3) A local authority may not at any time agree to such a variation as is mentioned in subsection (1) above if to do so would mean that, immediately after the variation, the total referred to in section 44(1) above would exceed the aggregate credit limit for the time being applicable to the authority by virtue of section 62 below.
- (4) Where a credit arrangement is varied as mentioned in subsection (1) above, the local authority shall secure that there is available to it an amount of credit cover equal to whichever is the less of—
- (a) the difference between the total amount of consideration paid and payable under the arrangement, disregarding the variation and the total amount of the consideration paid and payable under the arrangement as varied; and
  - (b) the difference between the adjusted cost of the arrangement and the credit cover already made available in connection with the arrangement in accordance with section 50 above;
- and subsections (3) and (5) of section 50 above apply for the purposes of this section as they apply for the purposes of that section, except that, in subsection (5), the reference to the time when the arrangement comes into being shall be construed as a reference to the time when it is varied.
- (5) Subject to subsection (7) below, the adjusted cost of the arrangement referred to in subsection (4)(b) above is the aggregate of—
- (a) the consideration which, in the financial year in which the arrangement is varied and in any earlier financial year, has been or falls to be given by the local authority; and
  - (b) the amount which, at the time of the variation, the authority estimate will be the cost of the arrangement, as varied, in each subsequent financial year determined as follows.
- (6) Subject to subsection (7) below, for any subsequent financial year the cost of the arrangement as varied shall be determined by the formula in section 49(2) above but, for this purpose,—
- “x” is the amount of the consideration which the authority estimate will be given by them in that financial year under the arrangement as varied;
  - “r” is the percentage rate of discount for the financial year in which the arrangement is varied, as prescribed by regulations made by the Secretary of State for the purposes of section 49 above;
  - “n” is the financial year in which the consideration falls to be given, 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).
- (7) Subsections (5) and (6) above do not apply in relation to a credit arrangement as to which the method of calculating the initial cost and the cost at any time is provided

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for by regulations under section 49(3) above; and any adjusted cost or cost which would otherwise fall to be determined in accordance with those subsections shall be determined in accordance with provisions made by the regulations.

- (8) Where a credit arrangement is varied as mentioned in subsection (1) above, the cost of the arrangement at any time after the variation shall be determined in accordance with subsections (5) and (6) above (in like manner as the determination of the adjusted cost) but on the basis of an estimate made at the time in question and leaving out of account any consideration which has been given by the authority under the arrangement before that time.
- (9) If, at any time after the terms of a credit arrangement have been varied as mentioned in subsection (1) above, the terms of the arrangement are again varied, the preceding provisions of this section shall have effect with any necessary modifications and, in particular, as if,—
- (a) the reference in subsection (1) above to the time the arrangement came into being were a reference to the time at which the arrangement was varied (or, as the case may be, last varied) as mentioned in that subsection;
  - (b) the reference in that subsection to the initial cost were a reference to the adjusted cost of the arrangement as so varied (or last varied); and
  - (c) the reference in paragraph (b) of subsection (4) above to the credit cover already made available in accordance with section 50 above included a reference to any additional credit cover made available under that subsection at the time of an earlier variation.
- (10) If at any time the terms of a credit arrangement are varied otherwise than as mentioned in subsection (1) above, then, so far as the variation affects the consideration falling to be paid by the local authority in any year, account shall be taken of the variation in determining the cost of the arrangement at any subsequent time (under subsection (8) above or subsection (3) or subsection (4) of section 49 above) but for other purposes the variation shall be disregarded.

## **52 Transitional credit arrangements**

- (1) Subject to the following provisions of this section, a local authority shall be taken to have entered into a transitional credit arrangement if, applying the rules in section 48(3) above, the arrangement came into being on or after 7th July 1988 and before 1st April 1990; and, except in so far as any provision of this Part otherwise provides, any reference in this Part to a credit arrangement includes a reference to a transitional credit arrangement.
- (2) Notwithstanding that a credit arrangement came into being as mentioned in subsection (1) above it is not a transitional credit arrangement if—
- (a) under the arrangement the local authority concerned became the lessees of any property (whether land or goods) and the arrangement was a credit arrangement by reason only of section 48(1)(a) above; or
  - (b) by virtue of subsection (11) or subsection (12) of section 80 of the Local Government, Planning and Land Act 1980 (valuation etc.) the amount of prescribed expenditure which the authority is to be taken as having paid on entering into the arrangement was nil; or
  - (c) by virtue of regulations under paragraph 4 of Schedule 12 to that Act, any expenditure of the authority under the arrangement was not prescribed expenditure; or

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- (d) the arrangement related only to works which, in whole or in part, were carried out before 1st April 1990 and in relation to which, by reason only of regulations under subsection (7) of section 80A of that Act (payment for works), subsection (1) of that section did not apply or, to the extent that the works were carried out on or after that date, would not have applied if they had been carried out before that date.
- (3) For the purpose of the application of sections 49 and 51 above in relation to a transitional credit arrangement—
- (a) such an arrangement shall be taken to have come into being (in the form in which it was on 1st April 1990) on that date (and, accordingly, any consideration given under the arrangement before that date shall be disregarded); and
  - (b) the local authority shall be taken to have made available in connection with the arrangement (and in accordance with section 50 above) an amount of credit cover equal to the cost of the arrangement on 1st April 1990.

### *Credit approvals*

#### **53 Basic credit approvals**

- (1) Before the beginning of each financial year, the Secretary of State shall issue to each local authority, in the form of a notice in writing, a credit approval with respect to the authority's credit arrangements and expenditure for capital purposes during that year.
- (2) A credit approval issued under this section (in this Part referred to as a “basic credit approval”) may be nil but, subject to that, shall be expressed as an amount of money.
- (3) A basic credit approval shall have effect only for the financial year in respect of which it is issued and may be limited by excluding from the purposes for which the approval may be used capital purposes of a description specified in the approval.
- (4) Where regulations made by the Secretary of State so require, a basic credit approval shall specify, directly or by reference to tables or other documents specified in the approval, a period (in this Part referred to as the “amortisation period”) during which the authority to whom the approval is issued are required to set aside, from a revenue account, as provision to meet credit liabilities, amounts determined in accordance with the regulations.
- (5) Under subsection (4) above, if the regulations so provide, a basic credit approval may specify different amortisation periods in relation to the use of the approval in respect of credit arrangements and expenditure for capital purposes of different descriptions.

#### **54 Supplementary credit approvals**

- (1) Any Minister of the Crown may at any time issue to a local authority, in the form of a notice in writing, a credit approval (in this Part referred to as a “supplementary credit approval”).
- (2) A supplementary credit approval shall be expressed as an amount of money and shall be limited to credit arrangements and expenditure for capital purposes of a description specified in the approval (but, if the Minister concerned considers appropriate, all capital purposes may be so specified).

- (3) A supplementary credit approval shall have effect for such period as is specified in the approval; and where such an approval is issued not more than six months after the end of a financial year, it may specify a period which begins or begins and ends at any time during that financial year.
- (4) Subject to subsection (5) below, subsections (4) and (5) of section 53 above apply in relation to a supplementary credit approval as they apply in relation to a basic credit approval.
- (5) In the case of a supplementary credit approval issued in respect of expenditure which is treated by the authority concerned as expenditure for capital purposes by virtue only of directions under section 40(6) above, the approval must specify an amortisation period and the maximum amortisation period which may be specified shall be seven years.

## **55 Criteria for issuing credit approvals**

- (1) In determining the amount of a basic credit approval or a supplementary credit approval to be issued to a local authority, the Secretary of State or other Minister may have regard, subject to the following provisions of this section, to such factors as appear to him to be appropriate.
- (2) Without prejudice to the generality of subsection (1) above, the Secretary of State or other Minister may, in particular, have regard—
  - (a) to the amount of any grants or contributions which it appears to him that the authority concerned have received and are likely to receive from any person in respect of expenditure incurred by the authority or to be incurred by them before the expiry of the period for which the credit approval is to have effect; and
  - (b) subject to subsection (3) below, to the amount of capital receipts which it appears to him that the authority have received, might reasonably be expected to have received or to receive or are likely to receive before the expiry of the period for which the credit approval is to have effect.
- (3) In determining the amount of a credit approval, the Secretary of State or other Minister shall not take account of capital receipts—
  - (a) to the extent that the authority concerned are required to set aside the receipts as provision for credit liabilities; or
  - (b) to the extent that they are applied or paid as mentioned in subsections (7) to (9) of section 59 below.
- (4) In determining the amount of the basic credit approval or of a supplementary credit approval to be issued to a particular local authority in any financial year, the Secretary of State or other Minister shall not take account of the extent to which it appears to him that the local authority are or are likely to be in a position to finance expenditure for capital purposes from a revenue account.
- (5) In this section “capital receipts” includes sums which constituted capital receipts for the purposes of Part VIII of the Local Government, Planning and Land Act 1980, whether or not they fall to be treated as capital receipts under section 58 below.

## **56 Use of credit approvals by local authorities**

- (1) Subject to Part I of Schedule 3 to this Act, where a local authority have received a basic credit approval or a supplementary credit approval, then, if they so determine, the approval may be treated wholly or partly—
  - (a) as authority not to charge to a revenue account an amount of expenditure which is defrayed during the period for which the approval has effect and which is for capital purposes to which the approval applies; or
  - (b) as authority, within the period for which the approval has effect, to enter into or agree to a variation of a credit arrangement for purposes to which the approval applies.
- (2) Where a local authority have received a basic credit approval or a supplementary credit approval and that approval is not extinguished under section 57 below or Part I of Schedule 3 to this Act, then, if or to the extent that they have not made a determination with respect to it under subsection (1) above, the authority may, if they so determine, transfer the approval, reduced where appropriate under that section or Part, to another local authority, either in whole or in part; and, where such a transfer is made,—
  - (a) the transfer of the approval (or part) shall not be regarded for the purposes of this Part as its use by the transferor authority; and
  - (b) this Part (including this section) shall have effect as if the approval (subject to any reduction as mentioned above) had been issued, in whole or as to the part transferred, directly to the transferee authority.
- (3) To the extent that and at the time when, in reliance on a credit approval,—
  - (a) an amount of expenditure which is not charged to a revenue account of the authority concerned is defrayed, or
  - (b) the authority concerned enter into or agree to a variation of a credit arrangement,

the credit approval shall be regarded as used and, accordingly, shall not be available on any subsequent occasion or for any other purpose.
- (4) Subsection (3) above applies whether or not the determination under subsection (1) above precedes the date on which the expenditure is defrayed or, as the case may be, the credit arrangement is entered into or varied.
- (5) A determination by a local authority under subsection (1) above that a credit approval is to be treated as mentioned in paragraph (a) or paragraph (b) of that subsection may not be made later than 30th September in the financial year following that in which the authority defray the expenditure or, as the case may be, enter into or vary the credit arrangement in question.

## **57 Effect of certain capital grants on credit approvals**

- (1) In this section “specified capital grants” means grants, contributions and subsidies—
  - (a) which are paid to local authorities in aid of their expenditure for capital purposes;
  - (b) which are neither commuted payments falling within subsection (2) of section 63 below nor single or other payments falling within subsection (3) of that section; and
  - (c) which are, or to the extent that they are, specified for the purposes of this section by regulations made by the Secretary of State.

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- (2) If at any time a local authority receive a specified capital grant, such, if any, of the authority's credit approvals as are relevant to that grant shall, in accordance with the following provisions of this section, be reduced or, as the case may be, extinguished by deducting therefrom an amount equal to the grant.
- (3) For the purposes of this section, a credit approval is relevant to a specified capital grant if—
  - (a) the approval has effect at the time the grant is received or at any time thereafter; and
  - (b) the purposes for which the approval may be used are or include the purposes towards expenditure on which the grant is made.
- (4) Subject to subsections (5) and (6) below, where, by virtue of subsection (2) above, a deduction is required in respect of a specified capital grant,—
  - (a) the deduction shall be applied to the credit approvals which are relevant to the grant in the order in which those approvals were received;
  - (b) subject to paragraph (d) below, the reduction or extinguishment of any such approval shall be regarded as taking place when the grant is received;
  - (c) if the amount of the deduction exceeds the total of the credit approvals which are relevant to the grant and were received before the grant, the excess shall be applied in reduction (or extinguishment) of credit approvals which are so relevant and are received later; and
  - (d) any such reduction or extinguishment of a later credit approval as is referred to in paragraph (c) above shall be regarded as taking place when the approval is received.
- (5) Notwithstanding anything in subsection (4) above, any reduction or extinguishment of a credit approval which is required to be made under Part I of Schedule 3 to this Act shall be applied before any reduction or extinguishment under this section.
- (6) In any case where—
  - (a) before the time when a specified capital grant is received by a local authority, the authority have made a determination under subsection (1) of section 56 above with respect to a credit approval which is relevant to that grant, and
  - (b) by virtue of subsection (3) of that section, that credit approval is to any extent to be regarded as having been used before that time,the credit approval shall not, to that extent, be taken into account under subsections (2) and (4) above; but, subject to that, the making of a determination under section 56(1) above with respect to a credit approval shall not affect the operation of those subsections in relation to it.

### *Capital receipts*

## **58 Capital receipts**

- (1) For the purposes of this Part, the capital receipts of a local authority are, subject to the following provisions of this section, those sums received by the authority in respect of—
  - (a) the disposal of any interest in an asset if, at the time of disposal, expenditure on the acquisition of the asset would be expenditure for capital purposes;

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- (b) the disposal of any investment other than an investment which, at the time of disposal, is an approved investment;
- (c) the repayment of, or a payment in respect of, any grants or other financial assistance of such a description that, if the expenditure on the grant or assistance had been incurred at the time of the repayment or payment, it would have constituted expenditure for capital purposes; or
- (d) the repayment of the principal of an advance (not being an approved investment) made by the authority for such a purpose that, if the advance had been made at the time of the repayment, expenditure incurred on it would have constituted expenditure for capital purposes;

and those sums become capital receipts at the time they are in fact received.

- (2) The following sums are not capital receipts for the purposes of this Part, namely, sums received by an authority in respect of—
  - (a) the disposal of an interest in an asset which, at the time of the disposal, is an asset of a superannuation fund which the authority are required to keep by virtue of the Superannuation Act 1972; or
  - (b) the disposal of an investment held for the purposes of such a superannuation fund; or
  - (c) any repayment or payment such as is mentioned in paragraph (c) or paragraph (d) of subsection (1) above which is made to such a superannuation fund.
- (3) Subsection (1) above applies to sums received on or after 1st April 1990 but regardless of when the disposal or advance was made or the grant or other financial assistance was given and, in particular, whether or not it was made or given on or after that date but, in the case of a disposal made before that date, the reference in paragraph (a) or, as the case may be, paragraph (b) of subsection (1) above to the time of the disposal shall be construed as a reference to 1st April 1990.
- (4) Subject to subsection (6) below, to the extent that any sums which were received by a local authority before 1st April 1990 and either—
  - (a) constituted capital receipts for the purposes of Part VIII of the Local Government, Planning and Land Act 1980, or
  - (b) did not constitute such receipts by virtue of regulations under section 75(5) of that Act but are specified for the purposes of this subsection by regulations made by the Secretary of State,are represented in the authority's accounts for the financial year ending immediately before that date either by amounts shown as capital receipts which are unapplied as at the end of that year or by amounts included in the balance as at the end of that year of any fund established by the authority under paragraph 16 of Schedule 13 to the Local Government Act 1972, those sums shall be treated for the purposes of this Part as capital receipts received by the authority on that date; and any reference in this Part to "1980 Act receipts" is a reference to sums which are capital receipts by virtue of this subsection.
- (5) So far as may be necessary for the purposes of this Part, a local authority shall identify which (if any) sums falling within paragraphs (a) and (b) of subsection (4) above are represented by amounts included as mentioned in that subsection in the balance of a fund established as so mentioned.
- (6) Subsection (4) above does not apply to a sum in respect of which an amount shown as an unapplied capital receipt or included in a balance as mentioned in that subsection

is, on 1st April 1990, held in an investment which is not on that date an approved investment; and, so far as may be necessary for the purposes of this Part, where on that date a local authority hold investments which are not then approved investments, the authority shall identify which (if any) of the amounts so shown or included are to be treated as held in such investments.

- (7) Where an asset or investment falling within paragraph (a) or paragraph (b) of subsection (1) above is disposed of and the whole or part of the purchase price is not received by the authority at the time of the disposal, then, subject to subsection (9) below, any interest payable to the authority in respect of the whole or any part of the price shall not be regarded as a capital receipt.
- (8) Subject to subsection (9) below, in the case of a disposal of an asset which consists of the grant, assignment or surrender of a leasehold interest in any land or the lease of any other asset, only the following are capital receipts, —
- (a) any premium paid on the grant or assignment;
  - (b) any consideration received in respect of the surrender;
  - (c) any sum paid by way of rent more than three months before the beginning of the rental period to which it relates;
  - (d) any sum paid by way of rent in respect of a rental period which exceeds one year; and
  - (e) so much of any other sum paid by way of rent as, in accordance with directions given by the Secretary of State, falls to be treated as a capital receipt.
- (9) If the Secretary of State by regulations so provides,—
- (a) the whole or such part as may be determined under the regulations of a sum received by a local authority and which, apart from this subsection, would not be a capital receipt shall be such a receipt; and
  - (b) the whole or such part as may be so determined of a sum which, apart from this subsection, would be a capital receipt shall not be such a receipt.
- (10) This section and sections 59 to 61 below have effect subject to Part II of Schedule 3 to this Act in relation to certain disposals, payments and repayments occurring before 1st April 1990.

## **59 The reserved part of capital receipts**

- (1) At the time when a local authority receive a capital receipt, a part of that receipt (in this Part referred to as “the reserved part”) shall be set aside by the authority as provision to meet credit liabilities.
- (2) Subject to the following provisions of this section, the reserved part of a capital receipt shall be—
- (a) in the case of a receipt in respect of the disposal of dwelling-houses held for the purposes of Part II of the Housing Act 1985 (provision of housing), 75 per cent; and
  - (b) in the case of any other receipt, 50 per cent.
- (3) The Secretary of State may by regulations alter the percentage which (by virtue of subsection (2) above or the previous exercise of this power) is for the time being the reserved part of any capital receipt or provide that the amount which is the reserved part of any capital receipt shall be determined in accordance with the regulations; and any such regulations may make different provision in relation to—

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- (a) different descriptions of capital receipts; and
- (b) different descriptions of local authority;

and where the regulations specify a percentage, it may be any percentage from nil to 100.

- (4) If the Secretary of State by regulations so provides, capital receipts of a description specified in the regulations shall be treated for the purposes only of this section as reduced by an amount determined in accordance with the regulations.
- (5) In the exercise of the power conferred by subsection (3) or subsection (4) above, capital receipts and local authorities may be differentiated in any manner which appears to the Secretary of State to be appropriate and, in particular,—
- (a) capital receipts may be differentiated by reference to the source from which they are derived including, in the case of receipts derived from disposals, different descriptions of disposals; and
  - (b) local authorities may be differentiated by reference to their type, their credit ceilings and the nature of their statutory powers and duties.
- (6) Without prejudice to subsection (3) above, in any case where—
- (a) the consent of the Secretary of State is required for a disposal of a dwelling-house or any other property, and
  - (b) the Secretary of State gives a direction under this subsection with respect to a capital receipt in respect of that disposal,
- subsection (2) above shall have effect in relation to that capital receipt as if it provided that the reserved part of the receipt were a percentage thereof specified in the direction or, according as the direction provides, an amount determined in accordance with the direction; but any direction under this subsection relating to a 1980 Act receipt shall be made before 1st April 1990.
- (7) Subsection (1) above does not apply to a capital receipt received by an authority as trustee of a trust fund which is held for charitable purposes.
- (8) Where a local authority receive a capital receipt in respect of an asset, investment, grant or other financial assistance which was originally acquired or made by the authority 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 of the asset or investment or the repayment of the grant or assistance, the amount of the capital receipt shall be treated for the purposes of the preceding provisions of this section as reduced by the sum which appears to the authority to be so payable, including, in the case of a 1980 Act receipt, any sum which was payable, but was not in fact paid, before 1st April 1990.
- (9) Where a local authority receive a capital receipt, not being a 1980 Act receipt, in respect of—
- (a) a disposal of land held for the purposes of Part II of the Housing Act 1985, or
  - (b) any other disposal of land made by virtue of Part V (the right to buy) of that Act,

the amount of the capital receipt shall be treated for the purposes of the preceding provisions of this section as reduced by so much of the receipt as is applied by the authority in defraying the administrative costs of and incidental to any such disposal.

## **60 The usable balance of capital receipts**

- (1) This section applies to the balance of any capital receipts received by a local authority after deducting—
- (a) the reserved part of each such receipt; and
  - (b) any sum which, by virtue of subsection (8) or subsection (9) of section 59 above, falls to be deducted in determining the amount of any receipt for the purposes of the preceding provisions of that section;
- but nothing in this section applies to a capital receipt which falls within section 59(7) above.
- (2) The balance referred to in subsection (1) above (in this Part referred to as “the usable part” of the authority’s capital receipts) shall be applied by the local authority, according as they determine, in one of the following ways, or partly in one way and partly in the other,—
- (a) to meet expenditure incurred for capital purposes; or
  - (b) as provision to meet credit liabilities;
- and, subject to subsection (3) below, may be so applied in the financial year in which the receipts are received or in any later financial year.
- (3) A determination by a local authority under subsection (2) above as to the manner in which the usable part of their capital receipts are to be applied may not be made later than 30th September in the financial year following that in which, in accordance with the determination, the receipts are to be applied.
- (4) For the purposes of this Part, to the extent that the usable part of an authority’s capital receipts are applied as mentioned in subsection (2)(a) above, it shall be taken to be so applied at the time when the expenditure in question is defrayed.
- (5) For the purposes of this Part, to the extent that the usable part of an authority’s capital receipts are applied as mentioned in subsection (2)(b) above, it shall be taken to be so applied—
- (a) if it is used as an amount of credit cover as mentioned in section 50(3)(b) above, when the credit arrangement in question is entered into or varied; and
  - (b) subject to subsection (6) below, in any other case, on the last day of the financial year in which (pursuant to the local authority’s determination) it is so applied.
- (6) In the case of a determination under subsection (2) above which—
- (a) relates to the application of the usable part of a 1980 Act receipt in the financial year beginning on 1st April 1990, and
  - (b) is made not later than 30th September 1990,
- subsection (5)(b) above shall have effect with the substitution of a reference to 1st April 1990 for the reference to the last day of the financial year in which the usable part is so applied.

## **61 Capital receipts not wholly in money paid to the authority**

- (1) This section applies where—
- (a) the whole or part of the consideration received by a local authority on or after 1st April 1990 for a disposal falling within section 58(1) above either is not

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- in money or consists of money which, at the request or with the agreement of the local authority concerned, is paid otherwise than to the authority; or
- (b) the right of a local authority to receive such a repayment or payment as is referred to in section 58(1) above is assigned or waived for a consideration which is received on or after 1st April 1990 and which, in whole or in part, is not in money or which, at the request or with the agreement of the local authority, is paid otherwise than to the authority; or
- (c) on a disposal falling within section 58(8) above, any consideration is received on or after 1st April 1990 and, if it had been in money paid to the authority, it would have been a capital receipt.
- (2) Where this section applies in relation to any consideration, there shall be determined the amount which would have been the capital receipt if the consideration had been wholly in money paid to the local authority; and, subject to subsection (3) below, the amount so determined is in this section referred to as “the notional capital receipt”.
- (3) From the amount which, apart from this subsection, would be the notional capital receipt in relation to a disposal, repayment or payment there shall be deducted any amount of money that was paid or is payable to the local authority in respect of that disposal, repayment or payment and in respect of which section 59 above actually applies or will actually apply when the payment is received.
- (4) Where consideration to which this section applies is received in respect of a disposal, repayment or payment, the local authority shall set aside, at the time of the disposal or the assignment or waiver of the repayment or payment, and as provision to meet credit liabilities, an amount which, except in so far as regulations made or directions given by the Secretary of State otherwise provide, shall be equal to that which, under section 59 above, would be the reserved part of the notional capital receipt.
- (5) The amount falling to be set aside by a local authority under subsection (4) above shall be so set aside—
- (a) from the usable part of the authority’s capital receipts; or
- (b) from a revenue account of the authority.
- (6) If the Secretary of State by regulations so provides,—
- (a) consideration which is not in money, which is received by a local authority and which is of a description specified in the regulations, or
- (b) consideration which is in money, which is paid otherwise than to the authority and which is of a description specified in the regulations,
- shall be treated for the purposes of subsections (2), (4) and (5) above as consideration to which this section applies and, in relation to any such consideration, subsection (4) above shall apply with such modifications as are specified in the regulations.

#### *Aggregate credit limit*

## 62 **Aggregate credit limit**

- (1) For each local authority there shall be an aggregate credit limit which, subject to subsection (2) below, at any time shall be the total at that time of—
- (a) the authority’s temporary revenue borrowing limit;
- (b) the authority’s temporary capital borrowing limit;

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- (c) the authority's credit ceiling, as determined under Part III of Schedule 3 to this Act; and
- (d) the excess of the authority's approved investments and cash over their usable capital receipts;

but the reference in paragraph (d) above to approved investments and cash does not include investments or cash held for the purposes of such a superannuation fund or trust fund as is referred to in paragraph (h) or paragraph (i) of subsection (2) of section 42 above.

- (2) On an application made by a local authority, the Secretary of State may direct that, for any period specified in the direction, the amount which, apart from the direction, would be the authority's aggregate credit limit at any time during that period shall be increased by an amount specified in the direction with respect to that period; and any increase specified in a direction under this subsection may be expressed to have effect subject to compliance with such terms and conditions as may be so specified.
- (3) Subject to subsection (4) below, an authority's temporary revenue borrowing limit at any time is whichever is the less of—
  - (a) the total sums which at that time remain to be received by the authority and which, as income, fall or will fall to be credited to a revenue account of the authority for the current financial year; and
  - (b) the aggregate of—
    - (i) the total sums which, up to and including that time (whether in the current or a previous financial year), the authority have disbursed in respect of expenditure which falls to be charged to a revenue account of the authority for the current financial year; and
    - (ii) any relevant arrears in respect of which provision has been or is to be charged to such a revenue account or which have been or are to be written off and charged to such a revenue account;and for the purposes of paragraph (b)(ii) above "relevant arrears" are amounts in respect of income which remain to be received by the authority and which, as income, fall to be credited to a revenue account of the authority for the financial year beginning two years before the beginning of the current financial year.
- (4) At any time in a financial year the amount which, apart from this subsection, would be an authority's temporary revenue borrowing limit shall be increased by the addition of an amount in respect of the immediately preceding financial year, being whichever is the less of—
  - (a) the excess (if any) of the total sums which, up to and including that time, the authority have disbursed in respect of expenditure falling to be charged to a revenue account of the authority for that preceding year over the total sums which, up to and including that time, the authority have received in respect of income falling to be credited to such a revenue account; and
  - (b) the total sums which at that time remain to be received by the authority and which, as income, fall or will fall to be credited to a revenue account of the authority for that preceding year.
- (5) An authority's temporary capital borrowing limit at any time is so much of the expenditure defrayed by the authority for capital purposes in the eighteen months ending at that time as is due to be, but at that time has not yet been, re-imbursed by any other person, excluding expenditure which is to be re-imbursed or met out of grants from a Community institution; and for this purpose it is immaterial whether the re-

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imbursement is due as a result of an obligation arising by statute, contract or otherwise or is to take the form of a grant or other obligation voluntarily undertaken.

- (6) If at any time an authority's usable capital receipts exceed their approved investments and cash referred to in paragraph (d) of subsection (1) above, the amount taken into account under that paragraph shall be a negative amount.
- (7) Where an amount taken into account under paragraph (c) or paragraph (d) of subsection (1) above is a negative amount, it shall be a deduction in determining the total referred to in that subsection.
- (8) Any reference in this section to an authority's usable capital receipts at any time is a reference to the usable part of the authority's capital receipts so far as they have not been applied before that time.

*Amounts set aside to meet credit liabilities*

**63 Duty to set certain amounts aside as provision to meet credit liabilities**

- (1) Without prejudice to any other provision of this Part under which a local authority are required or authorised to set aside any amount as provision to meet credit liabilities, in each financial year a local authority shall, by virtue of this section, set aside, from such revenue account or accounts as the authority think fit, as provision to meet credit liabilities, an amount determined by the authority, being not less than the minimum revenue provision for that year referred to in Part IV of Schedule 3 to this Act.
- (2) Where, by virtue of section 157 below, the Secretary of State makes to a local authority a commuted payment, within the meaning of that section, the authority shall, at the time the payment is received, set aside an amount equal to that payment as provision to meet credit liabilities.
- (3) If, otherwise than by virtue of section 157 below, the Secretary of State or any other Minister of the Crown commutes into a single payment (or into a smaller number of payments than would otherwise be payable) sums which would otherwise have been paid to a local authority annually or by reference to any other period of time, the authority shall, at the time that single payment or, as the case may be, each of that smaller number of payments is received, set aside an amount equal to the payment as provision to meet credit liabilities.
- (4) Where a local authority receive any sum by way of grant from a Community institution towards the authority's expenditure on capital purposes, they shall at the time the sum is received, set aside an amount equal to that sum as provision to meet credit liabilities.
- (5) A determination under subsection (1) above shall be made not later than 30th September in the financial year following that to which the determination relates.

**64 Use of amounts set aside to meet credit liabilities**

- (1) Amounts for the time being set aside by a local authority (whether voluntarily or pursuant to a requirement under this Part) as provision to meet credit liabilities may, subject to subsection (2) below, be applied only for one or more of the following purposes—
  - (a) to meet any liability of the authority in respect of money borrowed by the authority, other than a liability in respect of interest;

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- (b) to meet any liability of the authority in respect of credit arrangements, other than those excluded by regulations under paragraph 11 of Schedule 3 to this Act; and
  - (c) where a credit approval has been used as authority not to charge particular expenditure to a revenue account, to meet that expenditure.
- (2) Subject to the following provisions of this section if, on the date which is the relevant date for any financial year, a local authority's credit ceiling, as determined under Part III of Schedule 3 to this Act, is a negative amount, any such amount as is referred to in subsection (1) above may in that financial year—
- (a) be applied for purposes specified by regulations made by the Secretary of State; or
  - (b) be transferred to a body so specified.
- (3) The aggregate of the amounts which may be applied by a local authority in accordance with subsection (2) above in any financial year shall not exceed the amount by which the authority's credit ceiling on the relevant date is less than nil.
- (4) References in subsections (2) and (3) above to the relevant date shall be construed as follows—
- (a) for the financial year beginning on 1st April 1990, the relevant date is that date; and
  - (b) for any subsequent financial year, the relevant date is the last day of the preceding financial year.
- (5) Regulations under subsection (2) above may specify conditions with which a local authority must comply in applying or transferring any amount as mentioned in that subsection and with respect to any amount so applied or transferred; and an amount shall not be taken to be applied or transferred under that subsection unless any such conditions are complied with.

### *Supplementary*

## **65 Information**

- (1) The Secretary of State may serve on a local authority a notice requiring the authority to supply to him such information as is specified in the notice and is required by him—
- (a) for the purpose of deciding whether to exercise his powers, and how to perform his functions, under this Part; or
  - (b) for the purpose of ascertaining whether an authority have acted, or are likely to act, in accordance with this Part; or
  - (c) for the purpose of assisting the formulation of government economic policies; but no information shall be required for the purpose specified in paragraph (c) above unless it relates to, or to plans or proposals about, the finances and expenditure of the authority or of any company in which the authority have an interest.
- (2) If the information specified in a notice under this section is in the possession or under the control of the authority on whom the notice is served, the authority shall supply the information required in such form and manner, and at such time, as is specified in the notice and, if the notice so requires, the information shall be certified (according as is specified in the notice) in one or both of the following ways,—

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- (a) by the chief finance officer of the authority, within the meaning of section 5 above, or by such other person as may be specified in the notice; and
  - (b) under arrangements made by the Audit Commission for Local Authorities in England and Wales.
- (3) If a local authority fail to comply with subsection (2) above, the Secretary of State may decide—
- (a) whether to exercise his powers, and how to perform his functions, under this Part, or
  - (b) whether the authority have acted, or are likely to act, in accordance with this Part,
- on the basis of such assumptions and estimates as he thinks fit.
- (4) In deciding—
- (a) whether to exercise his powers, and how to perform his functions, under this Part, or
  - (b) whether an authority have acted, or are likely to act, in accordance with this Part,
- the Secretary of State may also take into account any other information available to him, whatever its source and whether or not obtained under a provision contained in or made under this or any other enactment.

## **66 Interpretation of Part IV**

- (1) In this Part—
- (a) “approved investments” means investments approved for the purposes of this Part by regulations made by the Secretary of State;
  - (b) “financial year” means the period of twelve months beginning on 1st April;
  - (c) “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975; and
  - (d) “1980 Act receipt” has the meaning given by section 58(4) above.
- (2) For the purposes of this Part, a local authority—
- (a) incur a liability in respect of a payment at the time when they become unconditionally liable to make the payment; and
  - (b) discharge a liability in respect of a payment at the time when they make the actual payment, whether or not they have at that time become unconditionally liable to do so.
- (3) In relation to a credit arrangement,—
- (a) any reference in this Part to consideration given or to be given by the local authority under the arrangement does not include a reference to any consideration which is given before the time the arrangement comes into being (as defined in section 48(3) above); and
  - (b) any reference in this Part to a liability of the local authority under the arrangement does not include a reference to a liability which is met by the making of a payment before that time.
- (4) In relation to a local authority, references in this Part to proper practices are references to those accounting practices—
- (a) which the authority are required to follow by virtue of any enactment; or

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- (b) which, whether by reference to any generally recognised published code or otherwise, are regarded as proper accounting practices to be followed in the keeping of the accounts of local authorities, either generally or of the description concerned;
- but, in the event of any conflict in any respect between the practices falling within paragraph (a) above and those falling within paragraph (b) above, only those falling within paragraph (a) above are to be regarded as proper practices.
- (5) Subsection (4) above has effect not only for the purposes of this Act but also for the purposes of—
    - (a) any enactment passed after or in the same Session as this Act; and
    - (b) Part III of the Local Government Finance Act 1982 and the Local Government Finance Act 1988.
  - (6) If, under or by virtue of any enactment, all or any of the liabilities of an authority (in this subsection referred to as “the original authority”) in respect of a loan to or borrowing (or money borrowed) by the authority have become liabilities of another local authority (in this subsection referred to as “the current authority”) then, in so far as regulations made by the Secretary of State so provide,—
    - (a) in relation to the current authority, any reference in this Part to a loan to or borrowing (or money borrowed) by that authority includes a reference to the loan to or borrowing (or money borrowed) by the original authority; and
    - (b) if the original authority is a local authority for the purposes of this Part, any reference to a loan to or borrowing (or money borrowed) by that authority excludes a reference to the loan, borrowing (or money borrowed) in respect of which the liabilities have become those of the current authority.
  - (7) For the avoidance of doubt, except as provided by section 44(5) above, any reference in this Part to borrowing by a local authority does not include a reference to the temporary use by an authority of money forming part of a particular fund of the authority for a purpose other than that of the fund.