
STATUTORY INSTRUMENTS

1990 No. 432

The Local Authorities (Capital Finance) Regulations 1990

PART I
GENERAL

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Local Authorities (Capital Finance) Regulations 1990 and shall come into force on 1st April 1990.

(2) In these Regulations, “the Act” means the Local Government and Housing Act 1989; and except where the context otherwise requires any reference in these Regulations to a section is a reference to a section of the Act.

PART II
EXPENDITURE FOR CAPITAL PURPOSES

Expenditure to be expenditure for capital purposes

2.—(1) Expenditure incurred by a local authority in the issue of a relevant loan instrument shall be expenditure for capital purposes.

(2) In paragraph (1) above, a “relevant loan instrument” means a loan instrument issued in relation to any loan other than a loan in respect of which all payments or repayments by the authority are to be made not later than one year after the loan instrument is issued.

Expenditure not to be expenditure for capital purposes

3. Expenditure by a local authority pursuant to section 112 of the Local Government Act 1972⁽¹⁾ on the making of advances, grants or other financial assistance to an officer of the authority or to a person whom the authority intend to appoint as an officer shall not be expenditure for capital purposes.

(1) 1972 c. 70.

PART III

CHARGE OF EXPENDITURE TO REVENUE ACCOUNTS

Expenditure excluded from section 41(1)

4. Expenditure in respect of which a local authority have made a determination under section 42(2)(g) shall not be expenditure falling within section 42(2) where the expenditure is, or is to be, met out of a contribution made, or to be made, under section 516(1) of the Housing Act 1985(2) and the contribution is, or is to be, paid—

- (a) in annual sums payable in respect of a period of ten years or more; or
- (b) by way of commuted payments within the meaning of section 157.

PART IV

CREDIT ARRANGEMENTS

Interpretation

5.—(1) In this Part, references to the capital cost of a lease are references to the amount which, at the time a local authority become the lessees, the authority estimate will be the aggregate of—

- (a) any consideration which has been or falls to be given by the authority in respect of the lease before or during the financial year in which they become the lessees; and
- (b) the value of any consideration which falls to be given by the authority in respect of the lease in any subsequent financial year.

(2) For each subsequent financial year referred to in paragraph (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 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; 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 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,—

- (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,

(2) 1985 c. 68. Section 516 is amended by section 132(5) of the Local Government and Housing Act 1989.

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.

Leases and contracts which are not credit arrangements

6.—(1) A lease is excluded from section 48 if—

- (a) at the time the local authority become the lessees, they estimate that the consideration which has been or falls to be given by them in respect of the lease at or before that time, or within one year thereafter, is not less than 90 per cent. of the capital cost of the lease;
- (b) it is an operating lease of any vehicle, vessel, plant, machinery or apparatus;
- (c) the local authority become the lessees by virtue of an order made under section 168 of the Education Reform Act 1988⁽³⁾;
- (d) it is a lease of land which is part of the housing stock of a new town corporation; or
- (e) it is granted to the local authority in accordance with regulations made under section 100 of the Housing Act 1988⁽⁴⁾.

(2) For the purposes of paragraph (1)(b) above, an operating lease of any vehicle, vessel, plant, machinery or apparatus (“the asset”) is any lease where—

- (a) the lease or any arrangement (whether a credit arrangement or not) entered into in connection with the lease does not provide or do not together provide for—
 - (i) the property in the asset to transfer to the local authority under the lease or arrangement or any renewal or continuation of the lease or arrangement; or
 - (ii) the renewal or continuation of the lease or arrangement for a further period for a consideration which is materially less than what would be regarded, on the date on which the authority become the lessees or, if earlier, the arrangement is made (“the commencement date”) as the open market rent for that further period; or
 - (iii) the value of the asset at the time of the expiry or termination of the lease or arrangement or of the period of any renewal or continuation of the lease or arrangement to accrue directly or indirectly to the authority; and
- (b) the termination value of the asset is equal to or exceeds 10 per cent. of its value on the commencement date.

(3) In paragraph (2)(b) above, “termination value” means the value, as estimated by the authority on the commencement date, of the asset on the date on which the lease or arrangement is due to expire or terminate or, where provision is made for the renewal or continuation of the lease or arrangement, on the latest date on which it would expire or terminate if any right to renew or continue it were exercised.

(4) A contract is excluded from section 48 if—

- (a) it is a contract entered into by a local authority and a new town corporation which—
 - (i) provides for the transfer to the authority of all or part of the housing stock of a new town corporation; and
 - (ii) is entered into by the new town corporation by virtue of section 36 of the New Towns Act 1981⁽⁵⁾ or in accordance with regulations made under section 172(1);
- (b) it would not constitute a credit arrangement were the authority to make the estimate required by section 48(1)(b) in respect of each relevant financial year leaving out of account an amount of consideration equal to three per cent. of the value of all the

(3) 1988 c. 40.
(4) 1988 c. 50.
(5) 1981 c. 64.

consideration which has been or falls to be given under the contract by the authority; and, for this purpose, a “relevant financial year” is any relevant financial year (within the meaning of section 48(1)(b)) up to and including the last financial year during which the authority are to receive any consideration under the contract and the immediately following financial year; or

(c) it is a licensing contract.

(5) For the purposes of paragraph (4)(c) above, a licensing contract is any contract under which—

(a) the construction or enhancement of a dwelling or the provision of a dwelling by the conversion of a building or part of a building is carried out for a local authority on land the freehold of which or a leasehold interest in which is owned by the authority; and

(b) the authority are required, after the carrying out of the works,—

(i) to dispose of the freehold or grant a long lease of the dwelling to a person other than a public body or a company which, for the purposes of Part V of the Act (companies in which local authorities have interests), is under the control or subject to the influence of a local authority, or

(ii) to grant a shared ownership lease of the dwelling.

(6) In paragraph (5) above,—

“dwelling” means any building or part of a building which is occupied as a dwelling or which is a hostel providing accommodation for persons who are homeless within the meaning of Part III of the Housing Act 1985 (housing the homeless) or 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 creating a long tenancy within the meaning of section 115 of the Housing Act 1985;

“shared ownership lease” means a lease granted at a premium, calculated by reference to the value of the dwelling or the cost of providing it, of not less than 25 per cent. of the figure by reference to which it was calculated;

“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(6) (urban development).

(7) Any lease or contract is excluded from section 48 if—

(a) it is entered into by a local authority as an investment for the purposes of a superannuation fund which the authority are required to keep by virtue of the Superannuation Act 1972(7); or

(b) the local authority estimate, at the time they become the lessees or enter into the contract, that the value of all the consideration which has been or falls to be given by them in respect of the lease or contract does not exceed £10,000.

(8) In this regulation,

(a) “new town corporation” and “housing stock” have the same meaning as in section 172; and

(b) any reference to a contract is a reference to a single contract or, where two or more contracts taken together would constitute a credit arrangement, a reference to the two or more contracts taken together.

(6) 1980 c. 65.

(7) 1972 c. 11.

Initial and subsequent cost of leases

7.—(1) Any credit arrangement which is a lease shall be excluded from section 49(2), and in relation to any such credit arrangement, the initial cost and the cost of the arrangement at any time shall be calculated in accordance with paragraphs (2) to (11) below.

(2) The initial cost and cost at any time shall be nil in relation to any lease to which paragraph (3) or paragraph (4) below applies.

(3) This paragraph applies to a lease of land (“the lease”) where the term of the lease does not exceed three years, unless—

- (a) the local authority who become the lessees had, at any time within the period of ten years preceding the date on which they become the lessees, been entitled to the rents and profits of the whole or part of the land in question (an “initial interest”); or
- (b) any other local authority had, at any time within the period referred to in sub-paragraph (a) above, a leasehold interest in the whole or part of the land in question (an “earlier leasehold interest”); and the term of the lease, when added to the length of the period of any initial interests or earlier leasehold interests falling within the period referred to in sub-paragraph (a) above, exceeds three years.

(4) This paragraph applies to a lease of land (“the lease”) where—

- (a) the lease is of a qualifying dwelling;
- (b) the term of the lease does not exceed three years and ends on a date not later than six years after the initial date;
- (c) a local authority become the lessees on the expiry of another leasehold interest in the qualifying dwelling (in this regulation referred to as “the former interest”) or not later than seven days thereafter; and
- (d) the former interest was acquired on or before 23rd November 1989 by the local authority referred to in sub-paragraph (c) above or any other local authority.

(5) In paragraph (4) above—

“qualifying dwelling” means a dwelling-house which was let or occupied at any time during the period beginning on 23rd November 1989 and ending on 22nd February 1990 under a tenancy or a licence to occupy which was not a secure tenancy by virtue of paragraph 4 or paragraph 6 of Schedule 1 to the Housing Act 1985, and for this purpose, “dwelling-house” and “secure tenancy” have the same meaning as in Part IV of that Act (secure tenancies and the rights of secure tenants);

“the initial date” means the earliest date, during a period of ten years ending on the date on which the local authority referred to in paragraph (4)(c) above become the lessees, on which a leasehold interest (whether or not the former interest) in or the freehold of the qualifying dwelling was owned by a local authority.

(6) The initial cost in relation to a lease of land (“the lease”) where—

- (a) the lease does not fall within paragraph (3) or paragraph (4) above;
- (b) the local authority who become the lessees had, at any time preceding the date on which they become the lessees, but on or after 1st April 1990, acquired a leasehold interest in the whole or part of the land in question (an “earlier leasehold interest”); and
- (c) any earlier leasehold interests were granted by a lease falling within paragraph (3) or paragraph (4) above;

shall be the total of the capital cost of the lease and any consideration given by the authority in respect of any earlier leasehold interests.

(7) The initial cost in relation to a lease of land not falling within paragraphs (3), (4) or (6) above shall be the capital cost of the lease.

(8) The initial cost in relation to a lease of goods shall be the capital cost of the lease.

(9) The cost at any time in relation to a lease falling within paragraphs (6) to (8) above shall be calculated in like manner as the calculation of the capital cost of the lease 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 in respect of the lease before that time.

(10) For the purposes of this regulation, no account shall be taken of any consideration given by a local authority in respect of a lease—

- (a) if the lease is not a credit arrangement;
- (b) before the authority become the lessees;
- (c) during the period of three months beginning on the date on which they become the lessees in the case of a credit arrangement which is a lease excluded for the purposes of paragraph 11(2) of Schedule 3 to the Act by virtue of regulation 22; or
- (d) which is wholly in money and which is, or is to be, met out of a grant made under section 3 of the Civil Defence Act 1948⁽⁸⁾, section 31 of the Police Act 1964⁽⁹⁾, section 51 of the Powers of the Criminal Courts Act 1973⁽¹⁰⁾, section 63(6) of the Rent Act 1977⁽¹¹⁾ or section 59 of the Justices of the Peace Act 1979⁽¹²⁾.

(11) In this regulation, “the term of the lease” means the period unexpired at the date the local authority become the lessees.

Variation of credit arrangements

8.—(1) In relation to any credit arrangement which is a lease, the adjusted cost and the cost of the arrangement at any time after a variation as mentioned in section 51(1) shall be determined in accordance with paragraphs (2) to (8) below.

(2) Subject to paragraphs (4) to (6) below, the adjusted cost in relation to any credit arrangement which is a lease shall be 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 under the arrangement; 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.

(3) For each subsequent financial year referred to in paragraph (2)(b) above, the cost of the arrangement as varied shall be the amount determined by the formula in regulation 5(2) 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; and

(8) 1948 c. 5. Part of subsection (3) of section 3 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 1 to the Statute Law (Repeals) Act 1986 (c. 12).

(9) Part of subsection (1)(a) of section 31 was repealed by Schedule 30 to the Local Government Act 1972 and subsection (1)(c) was inserted by paragraph 1(7) of Schedule 11 to the Local Government Act 1985 (c. 51).

(10) 1973 c. 62.

(11) 1977 c. 42. Section 63(7) was amended by section 121(3) of, and paragraph 5 of Part I of Schedule 14 to, the Housing Act 1988.

(12) 1979 c. 55. Subsection (6) of section 59 was amended by section 12(10) of the Local Government Act 1985 and section 59 was further amended by section 189 of the Local Government and Housing Act 1989.

“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).

(4) The adjusted cost in relation to a credit arrangement which is a lease of land (“the lease”) where—

- (a) the initial cost of the arrangement was nil;
- (b) the arrangement is varied by an extension of the term of the lease;
- (c) the local authority who are the lessees had, at any time preceding the date on which they became the lessees, but on or after 1st April 1990, acquired a leasehold interest in the whole or part of the land in question (an “earlier leasehold interest”); and
- (d) any earlier leasehold interests were granted by a lease falling within regulation 7(3) or (4);

shall be the aggregate of an amount determined in accordance with paragraph (2) above and the amount of any consideration given by the authority in respect of any earlier leasehold interests.

(5) The adjusted cost in relation to a credit arrangement which is a lease of land (“the lease”) where the initial cost of the arrangement was calculated in accordance with regulation 7(6) shall be the aggregate of an amount determined in accordance with paragraph (2) above and the amount of any consideration given by the authority in respect of any earlier leasehold interests falling within regulation 7(6)(b).

(6) The adjusted cost in relation to a credit arrangement which is a lease of land (“the lease”) where—

- (a) the lease creates a tenancy to which Part II of the Landlord and Tenant Act 1954(13) (security for business and professional tenants) applies; and
- (b) the arrangement is varied by the continuation of the tenancy by virtue of section 24 of that Act;

shall be determined in accordance with, as the case may be, paragraph (2) or (5) above, or, if subparagraphs (a), (c) and (d) of paragraph (4) above apply, in accordance with that paragraph.

(7) Where a credit arrangement which is a lease is varied as mentioned in section 51(1), the cost at any time after the variation shall be determined in like manner as the determination in accordance with paragraph (2) above of the adjusted cost of the arrangement 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 in respect of the lease before that time.

(8) Regulation 7(10) shall apply for the purposes of this regulation as it applies for the purposes of regulation 7.

PART V

CREDIT APPROVALS

Specified capital grants

9.—(1) In respect of local authorities in England, the following grants, contributions and subsidies are specified for the purposes of section 57—

- (a) grants, contributions and subsidies paid under the following powers—

- (i) section 522(1) and (5) of the Housing Act 1985(**14**) (finance for grants for thermal insulation and payments in respect of administrative expenses);
 - (ii) section 429(1) of the Housing Act 1985 (contributions to improvement for sale schemes);
 - (iii) section 96(1) (contributions towards expenditure under Part VII of the Act) (renewal areas);
 - (iv) section 132(1) (contributions towards expenditure under Part VIII of the Act) (grants towards cost of improvements and repairs etc.);
 - (v) section 165(4) (slum clearance subsidy);
- (b) contributions and subsidies paid under the following powers, except to the extent that they are paid in annual sums payable in respect of a period of ten years or more—
- (i) section 245(1) of the Housing Act 1985(**15**) (contributions towards expenditure relating to environmental works in housing action areas);
 - (ii) section 259(1) of the Housing Act 1985(**16**) (contributions towards expenditure relating to general improvement areas);
 - (iii) section 312 of the Housing Act 1985(**17**) (slum clearance subsidy);
 - (iv) section 516(1) of the Housing Act 1985 (contributions towards expense of grants under Part XV of that Act) (grants for works of improvement, repair and conversion);
 - (v) section 569(1) of the Housing Act 1985(**18**) (contributions to certain expenses under Part XVI of that Act) (assistance for owners of defective housing).
- (2) In respect of local authorities in Wales, the following contributions and subsidies are specified for the purpose of section 57—
- (a) contributions and subsidies paid under the powers mentioned in paragraph (1)(a)(ii) to (v) above;
 - (b) contributions and subsidies paid under the powers mentioned in paragraph (1)(b)(i) to (iii) and (v) above, except to the extent that they are paid in annual sums payable in respect of a period of ten years or more.

PART VI

CAPITAL RECEIPTS

Interpretation

10.—(1) In this Part, references to the capital value of a lease are references to the amount which, at the time of the disposal by a local authority of the lease, the authority estimate will be the aggregate of—

- (a) any consideration which has been or falls to be received by the authority in respect of the disposal of the lease in the financial year in which they dispose of the lease or at any time before the beginning of that year; and

(14) Section 522 is repealed by Part II of Schedule 12 to the Act subject to the savings contained in the Local Government and Housing Act (Commencement No. 5 and Transitional Provisions) Order 1990 (S.I.1990/431).

(15) Section 245 of the 1985 Act is amended by section 98(5).

(16) Section 259 of the 1985 Act is amended by section 98(6).

(17) Section 312 is repealed by Part II of Schedule 12 to the Act subject to the savings contained in the Local Government and Housing Act 1989 (Commencement No. 4) Order 1990 (S.I. 1990/191).

(18) Section 569 is amended by section 157(8) of the Local Government and Housing Act 1989.

(b) the value of any consideration which falls to be received by the authority in respect of the disposal of the lease in any subsequent financial year.

(2) For each subsequent financial year referred to in paragraph (1)(b) above, the value of the consideration falling to be received 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 received 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 disposed of the lease by regulations made by the Secretary of State for the purposes of section 49; and

“n” is the financial year in which the consideration falls to be received expressed as a year subsequent to the financial year in which the authority disposed of the lease (so that the first of the subsequent financial years is 1, the next financial year is 2, and so on).

(3) Regulation 5(3) applies in relation to any consideration in respect of a lease or under a contract for the purposes of this regulation, and the following provisions of this Part, as it applies in relation to any consideration in respect of a lease for the purposes of Part IV of these Regulations.

1980 Act receipts

11. The following sums are specified for the purposes of section 58(4), namely, sums received by a local authority before 1st April 1990 in respect of the disposal of any interest in—

- (a) land held for the purposes of, or in connection with, the Central Criminal Court, the police, probation or magistrates' court services; and
- (b) vehicles or vessels, movable or immovable plant, machinery or apparatus held for the purposes of, or provided in connection with, the Central Criminal Court, the police, probation or magistrates' court services.

Sums to be capital receipts

12. The following sums received by a local authority shall be capital receipts—

- (a) any sums in respect of principal which fall to be paid to the authority by any body by virtue of—
 - (i) an order made under section 51(2), 58(2) or 67(4) of, or paragraph 7 or 9 of Schedule 10 to, the Local Government Act 1972(19), regulations made under section 67(1) or (2) of that Act, or an agreement made under section 68 of that Act, in relation to any matter which has been transferred by virtue of the order, regulations or agreement, as the case may be, from the authority to the body;
 - (ii) an order made under section 254(1) or (2)(a) or (d) of the Local Government Act 1972 or under those provisions as extended by section 34(1) of, and paragraph 5(2) (b) of Schedule 6 to, the Water Act 1973(20), in relation to any matter which has been transferred by virtue of the Local Government Act 1972 or the order from the authority to the body; or

(19) 1972 c. 70.

(20) 1973 c. 37.

- (iii) an order made under section 23(3) or 84 of the London Government Act 1963⁽²¹⁾ in relation to any matter which has been transferred by virtue of the order from the authority to the body; and
- (b) any sums received by the authority (“the designated authority”) in respect of repayments of principal in relation to money which, by virtue of an order made under section 66(1) or 67(3) of the Local Government Act 1985, a local authority are deemed to have borrowed from the designated authority.

Sums not to be capital receipts

13. Any sums received by a local authority in respect of a payment such as is mentioned in section 58(1)(c) shall not be capital receipts unless the payment is made by the person to whom a grant or financial assistance is or was made by the local authority.

Reserved part of capital receipts

14.—(1) In respect of local authorities in England, the reserved part of a capital receipt for the purposes of section 59(3) shall, in the case of capital receipts of a description mentioned in column 1 of Part I of Schedule 1 to these Regulations, be the percentage specified in column 2 of Part I of that Schedule.

(2) In respect of local authorities in Wales, the reserved part of a capital receipt for the purposes of section 59(3) shall, in the case of capital receipts of a description mentioned in column 1 of Parts I and II of Schedule 1, be the percentage specified in column 2 of Parts I and II of that Schedule.

Capital receipts to be treated as reduced: disposal of recently acquired interest

15.—(1) Capital receipts of a description specified in paragraph (2) below shall be treated for the purposes only of section 59 as reduced by an amount determined in accordance with paragraphs (4) to (6) below.

(2) For the purposes of paragraph (1) above, capital receipts derived from a disposal of an interest in land, other than capital receipts of a description specified in regulation 16(2), are specified where—

- (a) the disposal takes place either not later than two years after the date on which the local authority disposing of the interest acquired an interest in the land or, if the authority entered into a contract for the disposal within that period, not later than three years after that interest was acquired;
- (b) the acquired interest referred to in sub-paragraph (a) above was either the freehold or a lease which was acquired on or after 1st January 1989;
- (c) if the acquired interest was the freehold, the disposal is of that freehold or is of a lease to which paragraph (3) below applies and which at the time of the disposal is for a term of which 125 years or more are unexpired; and
- (d) if the acquired interest was a lease, the disposal is of—
 - (i) the freehold;
 - (ii) the acquired interest; or
 - (iii) a lease to which paragraph (3) below applies and which at the time of the disposal is for an unexpired term of 125 years or more or for an unexpired term greater than the unexpired term of the acquired interest.

(21) 1963 c. 33. Paragraph (a) and part of paragraph (b) of section 23(3) were repealed with savings by Schedule 17 to the Local Government Act 1985 (c. 51).

(3) This paragraph applies to any lease where, at the time of the disposal of the lease, the local authority estimate that not less than 90 per cent. of the capital value of the lease has been or is to be received by the authority within one year of the date of the disposal.

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

- (a) if the local authority entered into a credit arrangement for the purpose only of acquiring the interest referred to in paragraph (2)(a) above, the initial cost of the credit arrangement;
- (b) the amount of any consideration given by the authority in respect of the acquisition of that interest other than any consideration taken into account by virtue of sub-paragraph (a) above; and
- (c) the amount of any costs incurred by the authority in connection with that acquisition or the disposal, other than the amount of any costs taken into account by virtue of sub-paragraph (a) above.

(5) Where an authority dispose successively of two or more interests in the relevant land, the amount of the reduction under this regulation may be applied as respects the receipts derived from any of those disposals.

(6) If—

- (a) before the time any receipt is received, an amount falls to be set aside by the authority under section 61(4) or paragraph 7(2) of Schedule 3 to the Act in respect of any disposal of any interest in the relevant land; and
- (b) in accordance with regulation 20(7), the amount of the notional capital receipt is treated as reduced by an amount determined by reference to this regulation;

there shall be deducted from the amount which, apart from this paragraph, would be the amount of the reduction determined in accordance with this regulation, the amount by which the notional capital receipt is so treated as reduced.

Capital receipts to be treated as reduced: disposal of certain dwellings

16.—(1) As respects local authorities in England, capital receipts of a description specified in paragraph (2) below shall be treated for the purposes only of section 59 as reduced by an amount determined in accordance with paragraphs (3) to (5) below.

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

- (a) the freehold;
- (b) a lease to which regulation 15(3) applies and which at the time of the disposal is for a term of which 125 years or more are unexpired;
- (c) a shared ownership lease; or
- (d) if at the time of the disposal the authority do not own the freehold of the dwelling or a lease of the dwelling for a term of which 125 years or more are unexpired, the authority's interest in the dwelling;

provided that the authority have not at any time before the disposal granted a lease of the dwelling, other than a shared ownership lease, and that the dwelling has not been occupied under a secure tenancy.

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

- (a) where the dwelling was acquired by the authority, the cost of the acquisition of the interest or interests in the dwelling;
- (b) where the dwelling was constructed by or for the authority,—
 - (i) the cost of its construction; and

- (ii) if the land on which the dwelling was constructed was acquired by the authority on or after the relevant date, the cost of the acquisition of the land;
 - (c) where the dwelling was provided by the conversion by or for the authority of a building or part of a building,—
 - (i) the cost of the conversion; and
 - (ii) if the building or part of the building was acquired by the authority on or after the relevant date, the cost of the acquisition of the building or part of the building;
 - (d) the cost of any enhancement of the dwelling after its acquisition, construction or provision, as the case may be, by or for the authority; and
 - (e) the amount of any costs incurred by the authority in connection with the disposal.
- (4) In paragraph (3) above, the cost of the acquisition, construction, conversion or enhancement, as the case may be, is the aggregate of—
- (a) if the authority entered into a credit arrangement for the purposes only of the acquisition, construction, conversion or enhancement, as the case may be, the initial cost of the credit arrangement; and
 - (b) the amount of any consideration given or costs incurred by the authority in respect of the acquisition, construction, conversion or enhancement, as the case may be, other than any consideration taken into account by virtue of sub-paragraph (a) above.
- (5) Paragraphs (5) and (6) of regulation 15 shall apply in relation to the amount of any reduction determined in accordance with this regulation as they apply in relation to the amount of any reduction determined in accordance with regulation 15.
- (6) In this regulation,—
- “dwelling” and “shared ownership lease” have the meaning given by regulation 6(6);
 - “relevant date” means the date three years before the date of the disposal or, if there is more than one disposal falling within paragraph (2) above relating to a dwelling, the first such disposal;
 - “secure tenancy” has the same meaning as in Part IV of the Housing Act 1985.

Capital receipts to be treated as reduced: disposal of recently improved land

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

(2) For the purposes of paragraph (1) above, capital receipts derived from a disposal by a local authority of an interest in land, other than any 1980 Act receipts and any capital receipts of a description specified, as respects local authorities in England, in regulation 16(2), are specified where—

- (a) the interest is of a description mentioned in sub-paragraph (a), (b), (c) or (d), as the case may be, of regulation 16(2), but, for the purposes of this regulation, the references in sub-paragraph (d) to the dwelling are to be construed as references to the land; and
 - (b) the authority have incurred expenditure on the enhancement of the land at any time during the relevant financial years.
- (3) For the purposes of paragraph (1) above, the amount of the reduction is the aggregate of—
- (a) if during the relevant financial years the authority entered into a credit arrangement for the purpose only of the enhancement of the land, the initial cost of the credit arrangement; and

- (b) the amount of any expenditure incurred by the authority on the enhancement of the land during the relevant financial years, other than any expenditure taken into account by virtue of sub-paragraph (a) above.
- (4) Paragraph (5) of regulation 15 shall apply in relation to the amount of any reduction determined in accordance with this regulation as it applies in relation to the amount of any reduction determined in accordance with regulation 15.
- (5) Any reference in this regulation to the enhancement of land does not include—
 - (a) the reclamation or laying out of the land; or
 - (b) the construction, preparation or replacement of roads, buildings or other structures.
- (6) In this regulation, the “relevant financial years” means the financial year in which the disposal of the interest in the land, or if there is more than one disposal falling within paragraph (2) above relating to the land, the first such disposal, takes place, and the two financial years preceding that year.

Capital receipts to be treated as reduced: replacement of assets

18.—(1) Capital receipts of a description specified in paragraph (2) below shall be treated for the purposes only of section 59 as reduced by an amount determined in accordance with paragraphs (4) to (10) below.

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

- (a) the interest is of a description mentioned in sub-paragraph (a), (b) or (d), as the case may be, of regulation 16(2) but, for the purposes of this regulation, the references in sub-paragraph (d) to the dwelling are to be construed as references to the land;
- (b) either—
 - (i) the land, immediately before its disposal, is used for a purpose mentioned in Part I of Schedule 2 to these Regulations, or is of a description mentioned in column 1 of Part II of that Schedule; or
 - (ii) if the disposal is made pursuant to a compulsory purchase order, the land has been held for the purposes of Part II of the Housing Act 1985 (provision of housing) for a period of two years or more ending at the time of the disposal or the time of entry by the acquiring authority, whichever is the earlier; and
- (c) paragraph (3) below applies.

(3) This paragraph applies where on or after 1st January 1989 the authority decided, at any time during the period of three years ending at the time of the disposal or, if it is earlier, the time at which the capital receipts are received,—

- (a) to dispose of the interest in the land;
- (b) either to acquire another interest in land (referred to in this regulation as “the new land”) or to carry out works to a building (referred to in this regulation as “the new building”), or both; and
- (c) either—
 - (i) in the case of land used for a purpose mentioned in Part I of Schedule 2 to the Regulations, to use the new land or the new building for the same purpose as the land disposed of by the authority; or
 - (ii) in the case of land which is of a description mentioned in column 1 of Part II of Schedule 2 to the Regulations, to use the new land or the new building for the

corresponding purpose or one of the corresponding purposes mentioned in column 2 of Part II of that Schedule in respect of land of that description; or

(iii) in the case of land of a description mentioned in paragraph 2(b)(ii) above, to use the new land or the new building for the purposes of Part II of the Housing Act 1985.

(4) For the purposes of paragraph (1) above, the amount of the reduction, is subject to paragraph (9) below, the aggregate of—

- (a) where the local authority acquire an interest in the new land, the cost of the new land; and
- (b) where—

- (i) the local authority carry out works to the new building or the whole or part of the consideration received by the authority for the disposal is the carrying out of works to the new building, and

- (ii) there was a building on the land disposed of by the authority at the time of the disposal,

the cost of the new building.

(5) For the purposes of paragraph (4) above, the cost of the new land or the new building is, subject to paragraphs (7) to (9) below, the aggregate of—

- (a) if the authority, in accordance with their decision referred to in paragraph (3) above, have entered into a credit arrangement for the purposes only of the acquisition of an interest in the new land or the carrying out of works to the new building, the initial cost of the credit arrangement; and
- (b) the amount of any consideration given or which falls to be given or costs incurred by the authority, in accordance with their decision referred to in paragraph (3) above, in respect of the acquisition of an interest in the new land or the carrying out of works to the new building, other than any consideration taken into account by virtue of sub-paragraph (a) above.

(6) In paragraph (5)(b) above, the amount of any consideration which falls to be given by the authority in any financial year beginning after the time of the disposal shall be determined by the formula in regulation 5(2) as if—

- (a) the references to consideration were references to consideration which falls to be given by the authority; and
- (b) the references to the lease and the financial year in which the authority became the lessees were references to the acquisition of an interest in the new land or the carrying out of works to the new building and to the financial year in which the disposal of the interest in the land, or if there is more than one disposal falling within paragraph (2) above relating to the land, the first such disposal, took place.

(7) If there is a building on the new land, there shall be excluded from the cost of the new land such part of the cost as is referable to the building unless there was a building on the land disposed of by the authority at the time of the disposal.

(8) If the cost of the new building and such part of the cost of the new land as is referable to an existing building is or will exceed the reasonable cost of an equivalent replacement of a building or buildings (“the former building”) on the land disposed of by the authority at the time of the disposal, the cost of the new land or the new building shall be the aggregate of the amounts described in paragraph (5) above, but calculated on the basis of an estimate of the consideration or costs which would have been given or incurred by the authority if the cost of the new building and such part of the cost of the new land as is referable to an existing building had been equal to the reasonable cost of an equivalent replacement of the former building.

(9) Paragraphs (4)(b)(ii), (7) and (8) above shall not apply in the case of capital receipts derived from the disposal of an interest in land where the land is used immediately before its disposal for the purpose mentioned in paragraph 9 of Part I of Schedule 2 to these Regulations.

(10) Paragraphs (5) and (6) of regulation 15 shall apply in relation to the amount of any reduction determined in accordance with this regulation as they apply in relation to the amount of any reduction determined in accordance with regulation 15.

(11) For the purposes of this regulation,—

- (a) any reference to the carrying out of works to a building includes the construction of the building; and
- (b) land or a building is not used for the same or a corresponding purpose unless it is used for the benefit of the inhabitants of all or part of the same area as the land disposed of by the local authority.

(12) In this regulation, the “time of the disposal” means the time at which the disposal of the interest in the land, or if there is more than one disposal falling within paragraph (2) above relating to the land, the first such disposal, takes place.

Capital receipts to be treated as reduced: disposal of former new town assets

19.—(1) Capital receipts of a description specified in paragraph (2) below shall be treated for the purposes only of section 59 as reduced by an amount determined in accordance with paragraphs (4) and (5) below.

(2) For the purposes of paragraph (1) above, capital receipts derived from a disposal by a local authority of any dwelling are specified where—

- (a) the dwelling was acquired by the authority from a new town corporation;
- (b) the dwelling was disposed of by the new town corporation to the authority by virtue of section 36 of the New Towns Act 1981(22) or in pursuance of any regulations made under section 172(1); and
- (c) the whole or part of the consideration falling to be given by the authority to the new town corporation in respect of the acquisition falls to be given on the disposal by the authority of the dwelling.

(3) In paragraph (2) above, “new town corporation” and “dwelling” have the same meaning as in section 172.

(4) For the purposes of paragraph (1) above, the amount of the reduction in the case of capital receipts derived from any disposal shall be the amount of any consideration which falls to be given by the authority as mentioned in paragraph (2)(c) above.

(5) Paragraphs (5) and (6) of regulation 15 shall apply in relation to the amount of any reduction determined in accordance with this regulation as they apply in relation to the amount of any reduction determined in accordance with regulation 15.

Capital receipts not wholly in money paid to the authority

20.—(1) In this regulation, subject to paragraphs (7) and (8) below, “the notional capital receipt” means—

- (a) in relation to any consideration to which section 61 applies, the amount of the notional capital receipt determined in accordance with subsection (2) of that section; and
- (b) in relation to any consideration falling within paragraph 6 of Schedule 3 to the Act, the amount of the capital receipt referred to in paragraph 7(3) of that Schedule.

(22) 1981 c. 64.

(2) Where a local authority receive consideration to which section 61 applies or which falls within paragraph 6 of Schedule 3 to the Act (referred to in this regulation as “non-monetary consideration”), the authority shall set aside an amount which, subject to paragraphs (3), (4) and (6) below, is equal to the amount which, under section 59, would be the reserved part of the notional capital receipt.

(3) In the case of non-monetary consideration which is—

- (a) received by a local authority in respect of a disposal of land which immediately before the disposal had not been used for a period of two years for the purpose for which it was held by the authority; and
- (b) consists of land which immediately before it is received is land on which there are no buildings or other structures;

the reserved part of the notional capital receipt shall be nil.

(4) In the case of non-monetary consideration which is received by a local authority in respect of the disposal of an area of land and which consists of—

- (a) the grant of a right to nominate persons either to acquire the freehold of or a leasehold interest in dwellings on land within that area or to occupy such dwellings; or
- (b) an obligation to restrict the acquisition of the freehold of or a leasehold interest in dwellings on land within that area or the occupation of such dwellings to persons of a particular description;

the reserved part of the notional capital receipt shall be nil.

(5) In paragraph (4) above, “dwelling” has the meaning given by regulation 6(6).

(6) In the case of non-monetary consideration which is received by a local authority in respect of the assignment or surrender of a leasehold interest in any land and which consists of a promise not to sue for breach of a repairing covenant in the lease, the reserved part of the notional capital receipt shall be nil.

(7) The amount of the notional capital receipt shall be treated as reduced for the purposes of section 61(4) or, as the case may be, paragraph 7(3) of Schedule 3 to the Act by an amount which, subject to paragraph (8) below is the amount which, if the consideration had been wholly in money paid to the authority, would be determined in accordance with regulation 15, 16, 18 or 19, as the case may be, as the amount of any reduction of the capital receipt.

(8) Where the reserved part of a capital receipt falls to be set aside in respect of a disposal under section 59(1) at or before the time at which an amount falls to be set aside in respect of that disposal under section 61(4) or, as the case may be, paragraph 7(2) of Schedule 3 to the Act, there shall be deducted from the amount which, apart from this paragraph, would be the amount of the reduction in accordance with paragraph (7) above, the amount of any reduction determined in accordance with regulation 15, 16, 18 or 19, as the case may be, in relation to that capital receipt.

PART VII

CREDIT CEILING

Modifications of initial credit ceiling and credit ceiling on or after 1st April 1990

21.—(1) The modifications of a local authority’s initial credit ceiling mentioned in Part I of Schedule 3 to these Regulations are prescribed for the purposes of paragraph 8 of Schedule 3 to the Act.

(2) A local authority’s credit ceiling shall be determined at any time on or after 1st April 1990 in accordance with paragraphs 11 to 14 of Schedule 3 to the Act subject to the modification which

is mentioned in Part II of Schedule 3 to these Regulations and which is prescribed for the purposes of paragraph 10 of Schedule 3 to the Act.

Excluded credit arrangements

22.—(1) Any credit arrangement which is a lease of land shall be excluded for the purposes of paragraph 11(2) of Schedule 3 to the Act where, at the time a local authority become the lessees, they estimate that the value of the consideration which they will have given in respect of the lease by the end of each relevant financial year will be equal to or more than the relevant amount at that date.

(2) For the purposes of paragraph (1) above, “the relevant amount” is the total amount of consideration which would have fallen to have been given by the local authority in respect of the lease at or before the end of a relevant financial year if the consideration to be given by the authority in respect of the lease had been wholly in money and consisted of a single annual payment of rent to be paid in the year equal to the amount estimated by the authority as the open market rent for the lease on the assumption that no premium fell to be paid in respect of the grant or assignment of the lease.

(3) In this regulation, the reference to a relevant financial year is a reference to a financial year which begins after the local authority become the lessees.

(4) Regulation 5(3) applies for the purposes of this regulation as it applies for the purposes of Part IV of these Regulations.

PART VIII

MINIMUM REVENUE PROVISION

Interpretation

23. In this Part—

“limited approval” means an approval given by the Secretary of State under paragraph 1(b) of Schedule 13 to the Local Government Act 1972⁽²³⁾ where the approval was given subject to a condition that any money borrowed by virtue of the approval was to be repaid by a particular date within 10 years from the date on which the approval was given;

“relevant period” in relation to any limited approval means the period commencing on 1st April 1990 and ending on the last day of the financial year in which the money borrowed by virtue of the approval is to be repaid;

“transitional credit arrangements” has the same meaning as in section 52.

Adjusted initial credit ceiling and adjusted credit ceiling

24.—(1) A local authority’s adjusted initial credit ceiling shall be their initial credit ceiling, determined in accordance with Part III of Schedule 3 to the Act, as modified for the purposes of Part IV of that Schedule in accordance with Part I of Schedule 4 to these Regulations.

(2) A local authority’s adjusted credit ceiling at any time shall be their credit ceiling at any such time, determined in accordance with Part III of Schedule 3 to the Act, as modified for the purposes of Part IV of that Schedule in accordance with Part II of Schedule 4 to these Regulations.

(23) 1972 c. 70. Part of paragraph 1(b) of Schedule 13 was repealed by Schedule 17 to the Local Government Act 1985 (c. 51).

Minimum revenue provision for the financial year beginning on 1st April 1990

25.—(1) For the financial year beginning on 1st April 1990, the amount in respect of principal for the purposes of paragraph 16(1)(a) of Schedule 3 to the Act shall be the aggregate of—

- (a) the percentages prescribed in paragraph (2) below of the amounts mentioned in that paragraph;
- (b) an amount determined in accordance with paragraph (3) below in respect of any advances which were made before 1st April 1990 from a loans fund established by a local authority under paragraph 15 of Schedule 13 to the Local Government Act 1972 and which were made by virtue of a limited approval; and
- (c) where any payments in respect of principal are required, by virtue of an order made under section 66(1) or 67(3) of the Local Government Act 1985⁽²⁴⁾, to be made by a local authority (“the designated authority”) into a fund in relation to a sum which, by virtue of the order, is to be treated as the designated authority’s transferred debt, an amount equal to the total of any such payments which fall to be made in the financial year beginning on 1st April 1990.

(2) The following percentages are prescribed for the purposes of paragraph 16(1)(a) of Schedule 3 to the Act in relation to amounts taken into account in determining a local authority’s adjusted initial credit ceiling—

- (a) in the case of an authority who are required, under Part VI of the Act (housing finance), to keep a Housing Revenue Account for the financial year beginning on 1st April 1990, 2 per cent. of the housing amount and 4 per cent. of the non-housing amount where these amounts are determined in accordance with Part I of Schedule 5 to these Regulations;
- (b) in the case of an authority not falling within sub-paragraph (a) above, 4 per cent. of the amount, if any, by which their adjusted initial credit ceiling exceeds the aggregate of—
 - (i) so much of the amount determined in accordance with paragraph 8(1)(a) of Schedule 3 to the Act as is in respect of advances falling within paragraph (1)(b) above; and
 - (ii) the amount determined in accordance with paragraph 8(1)(b) of Schedule 3 to the Act; and
- (c) 20 per cent. of the amount determined in accordance with paragraph 8(1)(b) of Schedule 3 to the Act.

(3) For the purposes of sub-paragraph (b) of paragraph (1) above, the amount shall be equal to the total of the amounts, if any, which would fall to be provided by the authority in the financial year beginning on 1st April 1990 for the repayment of so much of the principal of any advance falling within that sub-paragraph as has not been repaid before 1st April 1990 if the repayment were to be made by way of equal annual sums during the relevant period in respect of the advance.

Minimum revenue provision for subsequent financial years

26.—(1) For any financial year (referred to in this regulation as “the current financial year”) other than that beginning on 1st April 1990, the amount in respect of principal for the purposes of paragraph 15(1)(a) of Schedule 3 to the Act shall be the aggregate of—

- (a) the percentages prescribed in paragraph (2) below of the amounts mentioned in that paragraph;
- (b) an amount determined in accordance with paragraph (3) below in respect of any advances which were made before 1st April 1990 from a loans fund established by a local authority

(24) 1985 c. 51.

under paragraph 15 of Schedule 13 to the Local Government Act 1972 and which were made by virtue of a limited approval;

- (c) an amount determined in accordance with paragraph (4) below in relation to any supplementary credit approvals falling within section 54(5) issued to a local authority;
- (d) where any payments in respect of principal are required, by virtue of an order made under section 66(1) or 67(3) of the Local Government Act 1985, to be made by a local authority (“the designated authority”) into a fund in relation to a sum which, by virtue of the order, is to be treated as the designated authority’s transferred debt, an amount equal to the total of any such payments which fall to be made in the current financial year; and
- (e) the total of the amounts, if any, set aside by a local authority as provision to meet credit liabilities which were applied in the immediately preceding financial year in accordance with section 64(1)(b) in respect of any credit arrangement the initial cost of which was nil and which, at the time the amount was applied, had not been varied as mentioned in section 51(1).

(2) The following percentages are prescribed for the purposes of paragraph 15(1)(a) of Schedule 3 to the Act in relation to amounts taken into account in determining a local authority’s adjusted credit ceiling—

- (a) in the case of an authority who are required, under Part VI of the Act, to keep a Housing Revenue Account for the current financial year, 2 per cent. of the authority’s housing amount and 4 per cent. of the authority’s non-housing amount where these amounts are determined in accordance with Part II of Schedule 5 to these Regulations;
- (b) in the case of an authority not falling within sub-paragraph (a) above, 4 per cent. of the relevant amount where this amount is determined in accordance with Part III of Schedule 5 to these Regulations; and
- (c) for any financial year beginning before 1st April 1995, 20 per cent. of the amount determined in accordance with paragraph 8(1)(b) of Schedule 3 to the Act.

(3) For the purposes of sub-paragraph (b) of paragraph (1) above, the amount shall be equal to the total of the amounts, if any, which would fall to be provided by the authority in the current financial year for the repayment of so much of the principal of any advance falling within that sub-paragraph as has not been repaid before 1st April 1990 if the repayment were to be made by way of equal annual sums during the relevant period in respect of the advance.

(4) For the purposes of paragraph (1)(c) above, the amount shall be equal to the total of the amounts, if any, which would fall to be provided by the authority in the current financial year for the repayment of an amount equal to the extent to which any supplementary credit approval falling within section 54(5) has been used by the authority as mentioned in section 56(3) in any preceding financial year, if the repayment were to be made by way of equal annual sums over the amortisation period specified in the approval in question.

PART IX

SUPPLEMENTARY

Interpretation of Part IV of the Act

27.—(1) Any reference in Part IV of the Act to a loan to or borrowing (or money borrowed) by a local authority (“the current authority”) includes a reference to the loans to or borrowing (or money borrowed) by another authority in respect of which the liabilities have become those of the current authority under or by virtue of—

- (a) an order made under section 66(1) or 67(3) of the Local Government Act 1985;

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- (b) section 25(6) of the Local Government Act 1985;
- (c) an order made under section 51(2), 58(2) or 67(4) of, or paragraph 7 or 9 of Schedule 10 to, the Local Government Act 1972 or regulations made under section 67(1) or (2) of that Act;
- (d) an order made under section 254(1) or (2)(a) or (d) of the Local Government Act 1972; or
- (e) an order made under section 23(3) or 84 of the London Government Act 1963.

(2) Any reference in Part IV of the Act to a loan to or borrowing (or money borrowed) by a local authority excludes a reference to the loans to or borrowing (or money borrowed) by that authority in respect of which the liabilities have become those of another authority by virtue of an order made under section 51(2), 58(2) or 67(4) of, or paragraph 7 or 9 of Schedule 10 to, the Local Government Act 1972 or regulations made under section 67(1) or (2) of that Act.

2nd March 1990

Chris Patten
Secretary of State for the Environment

28th February 1990

Peter Walker
Secretary of State for Wales