
STATUTORY INSTRUMENTS

1990 No. 432

The Local Authorities (Capital Finance) Regulations 1990

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,

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⁽¹⁾;
 - (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⁽²⁾.
- (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⁽³⁾ 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 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.

(1) 1988 c. 40.
 (2) 1988 c. 50.
 (3) 1981 c. 64.

- (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(4) (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(5); 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.

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.

(4) 1980 c. 65.

(5) 1972 c. 11.

(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⁽⁶⁾, section 31 of the Police Act 1964⁽⁷⁾, section 51 of the Powers of the Criminal Courts Act 1973⁽⁸⁾, section 63(6) of the Rent Act 1977⁽⁹⁾ or section 59 of the Justices of the Peace Act 1979⁽¹⁰⁾.

(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

“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;

(6) 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).

(7) 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).

(8) 1973 c. 62.

(9) 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.

(10) 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.

(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⁽¹¹⁾ (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.

(11) 1954 c. 56.