
STATUTORY INSTRUMENTS

1997 No. 319

The Local Authorities (Capital Finance) Regulations 1997

PART IV

CREDIT ARRANGEMENTS

Leases and contracts which are not credit arrangements

Leases and contracts of small value

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

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

will not exceed £12,000.

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

- (a) a local authority shall be deemed to have entered into another arrangement with the same person, or an associate of his, if they have acquired a lease under which that person or associate is the lessor; and
- (b) two persons are associates of each other if, for the purposes of the Companies Act 1985(1), one of them is a subsidiary of the other, or they are both subsidiaries of some other person.

Leases under which the consideration given mostly in first year

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

Operating leases

20.—(1) In this regulation—

- (a) “operating lease” means a lease by a local authority of any vehicle, vessel, plant, machinery or apparatus; and
- (b) in relation to an operating lease—

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

- (i) “arrangement” means any arrangement (whether or not a credit arrangement) which is entered into in connection with the lease;
- (ii) “the asset” means the asset which is acquired by the authority under the lease; and
- (iii) “the commencement date” means the date on which the authority become the lessees under the lease, or, if earlier, the date on which the arrangement is made.

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

- (a) the transfer of the property in the asset to the authority;
- (b) the renewal or continuation of the lease or the arrangement on terms which provide for a transfer of the property in the asset to the authority;
- (c) the renewal or continuation of the lease or the arrangement for any period for a consideration which is materially less than the amount that would reasonably be regarded, on the commencement date, as the open market rent for that period; or
- (d) the receipt by the authority of any consideration which is equivalent, or determined by reference, to the value of the asset when the lease expires, the arrangement terminates or the period of any renewal or continuation of the lease or the arrangement terminates.

(3) For the purposes of paragraph (2), the termination value of the asset is the amount which, on the commencement date, the authority estimate will be the value of the asset

- (a) when the lease expires, or the arrangement terminates; or
- (b) where the authority have a right to renew or continue the lease or the arrangement, on the latest date on which the lease or arrangement could expire or terminate if the authority exercised that right.

Contracts with residuary bodies

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

- (a) the Local Government Residuary Body (England)⁽²⁾; or
- (b) the Residuary Body for Wales or Corff Gweddilliol Cymru⁽³⁾.

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

Licensing contracts

22.—(1) In this regulation—

“dwelling” means any building or part of a building which is occupied as a dwelling, or is a hostel providing accommodation for persons who, for the purposes of Part VII of the Housing Act 1996 (homelessness)⁽⁴⁾, are homeless, or persons who have a special need for accommodation arising from physical or mental disability, age, infirmity or other special social disability or disadvantage;

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

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

(4) 1996 c. 52. See section 175 of that Act.

“long lease” means a lease which is a long tenancy for the purposes of Part IV of the Housing Act 1985 (secure tenancies and rights of secure tenants)(5);

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

“public body” means a local authority, a new town corporation or an urban development corporation established under Part XVI of the Local Government, Planning and Land Act 1980 (urban development)(6).

- (2) A contract to which paragraph (3) applies is excluded from section 48.
- (3) This paragraph applies to a contract which provides—
- (a) for the construction or enhancement of a dwelling, or the provision of a dwelling by the conversion of a building or part of a building, for the authority on land in which the authority have a freehold or leasehold interest; and
 - (b) that the authority are required, after the carrying out of the works, to grant a shared ownership lease of the dwelling or to dispose of the freehold or grant a long lease of the dwelling to any person other than a public body or a company which is a regulated company within the meaning given to that expression in article 1(4) of the Local Authorities (Companies) Order 1995(7).

Investments made for the purposes of a superannuation fund

23. A lease or a contract is excluded from section 48 if the authority become lessees under the lease or enter into the contract as an investment for the purposes of a superannuation fund which the authority are required to keep by virtue of the Superannuation Act 1972(8).

Other leases excluded from section 48

- 24.—**(1) A lease of any property is excluded from section 48 if it is—
- (a) assigned to the authority by a new town corporation; or
 - (b) granted to the authority in accordance with regulations made under section 100 of the Housing Act 1988 (tenants continuing as tenants of public sector landlord)(9).
- (2) A lease of any property is excluded from section 48 if a local authority become the lessees by virtue of—
- (a) the Local Government Changes for England (Property Transfer and Transitional Payments) Regulations 1995(10);
 - (b) article 9 of the Police and Magistrates' Courts Act 1994 (Commencement No. 5 and Transitional Provisions) Order 1994(11);
 - (c) a combination scheme under the Fire Services Act 1947(12);
 - (d) the Local Government Reorganisation (Wales) (Property etc.) Order 1996(13); or

(5) 1985 c. 68. See section 115 of that Act.

(6) 1980 c. 65.

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

(8) 1972 c. 11.

(9) 1988 c. 50. Section 100 was repealed by section 222 of, and paragraph 1 of Part I of Schedule 18 to, the Housing Act 1996 (c. 52) subject to the savings contained in paragraph 12 of the Schedule to the Housing Act 1996 (Commencement No. 3 and Transitional Provisions) Order 1996 (S.I. 1996/2402 (C. 62)).

(10) S.I. 1995/402.

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

(12) 1947 c. 41.

(13) S.I. 1996/532.

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- (e) article 15 of the National Park Authorities (England) Order 1996⁽¹⁴⁾, or an agreement under section 76 of the Environment Act 1995 (agreements as to incidental matters)⁽¹⁵⁾ or an award under subsection (3) of that section.

Other contracts excluded from section 48

25.—(1) A contract to which paragraph (2) applies is excluded from section 48.

(2) This paragraph applies to a contract which would not constitute a credit arrangement if the authority, in making the relevant estimates, disregarded an amount of consideration equal to three per cent. of the total value of the consideration falling to be given by them under the contract.

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

⁽¹⁴⁾ S.I. 1996/1243. There are amendments which are not relevant to this regulation.

⁽¹⁵⁾ 1995 c. 25.