
STATUTORY INSTRUMENTS

1997 No. 319

The Local Authorities (Capital Finance) Regulations 1997

PART IV

CREDIT ARRANGEMENTS

Private finance transactions

Transactions for the provision of a capital asset and services

40.—(1) In this regulation, in relation to a private finance transaction—

“asset” means the asset provided under the transaction; and

“relevant purpose” means the purpose for which the asset is provided under the transaction.

(2) A credit arrangement which is a private finance transaction shall be excluded from section 49(2), and the initial cost and the cost at any time of the arrangement shall be nil, if—

(a) the services provided in relation to the asset consist of, or include, maintaining and repairing the asset and doing everything necessary to ensure that the asset can be used for the relevant purpose in safety and comfort and in accordance with any requirements specified by the authority; and

(b) the authority determine, immediately before the date on which they enter into the transaction, that their estimate of amount B does not exceed 80 per cent. of their estimate of amount A.

(3) For the purposes of paragraph (2), in relation to a private finance transaction—

“amount A” means the amount which, apart from this regulation, would be the initial cost of the transaction; and

“amount B” is the amount which would be amount A if for each relevant financial year (within the meaning given to that expression in section 48(2)) the authority assumed—

(a) that the amount of fees falling to be paid under the transaction would be the minimum which could become payable in that year (without there being a breach of any term of the transaction); and

(b) that the minimum extent, rate or intensity of use of the asset for the relevant purpose would be 80 per cent. of the extent, rate or intensity of use estimated by them for that year for the purpose of estimating amount A.

Transactions for the replacement or enhancement of a building and provision of heating services

41.—(1) In this regulation, in relation to a private finance transaction to which paragraph (3) applies (a “relevant transaction”)—

“corresponding purpose”, in relation to any qualifying purpose, means the same qualifying purpose, or a different purpose within the same category as that which includes the same qualifying purpose;

“old building” means the relevant building in respect of which the authority make a decision such as is mentioned in paragraph (3)(b); and “new building” means the building which, in consequence of such a decision, the authority use for a corresponding purpose;

“qualifying purpose”, in relation to the use of land, means a purpose specified in any of the categories 1 to 6 and 8 and 9 of Schedule 1 to these Regulations, and “category” means one of those categories; and

“relevant building” means a building—

- (a) which is situated on non-housing land;
- (b) which is in use by the authority for a qualifying purpose; and
- (c) in which the authority have a freehold interest or a leasehold interest under a lease granted for a term of not less than 99 years.

(2) A credit arrangement which is a relevant transaction shall be excluded from section 49(2), and the initial cost and the cost at any time of the transaction shall be calculated in accordance with paragraphs (4) to (7).

(3) This paragraph applies to a private finance transaction where—

- (a) the initial cost of the transaction does not fall to be determined under regulation 40;
- (b) at any time during the period of five years ending on the date on which they enter into the transaction, the authority made a single decision either—
 - (i) to cease to use a relevant building and to use a different building for a corresponding purpose; or
 - (ii) to carry out works for the enhancement of a relevant building and to continue to use the same building, after the completion of the works, for a corresponding purpose;
- (c) the asset provided for the authority’s use under the transaction consists of, or includes, the new building or, as the case may be, the works of enhancement of the relevant building; and
- (d) the services provided in relation to the asset consist of, or include, maintaining and repairing the system for heating the new building and providing for the supply of the gas, electricity and fuel required for such heating.

(4) Subject to paragraph (7), the initial cost of a relevant transaction shall be the lesser of—

- (a) 70 per cent. of the amount which, apart from this regulation, would be the initial cost of the transaction; and
- (b) the amount which, apart from this regulation, would be the initial cost of the transaction minus the relevant deduction.

(5) For the purposes of paragraph (4)(b), the relevant deduction is the amount which would be the initial cost of the transaction assuming that—

- (a) the initial cost fell to be determined in accordance with section 49(1) and (2);
- (b) no consideration was required to be given in the financial year in which the transaction was entered into; and
- (c) for each subsequent financial year of the transaction, for the purposes of the formula in section 49(2), “x” was an amount equal to the product of the formula—

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

where—

“E” means the average annual expenditure which the authority incurred, during the period of 5 years ending on the date on which they enter into the transaction (or, if earlier, the date on which they cease to use the old building) in providing for the old building the same services as those to be provided under the transaction;

“i” means the figure in Table 2.1 of Economic Trends published by the Office for National Statistics as the most recent percentage change, quarter on corresponding quarter of previous year, of the implied gross domestic product deflator at market prices; and

“n” has the same meaning as in section 49(2).

- (6) Subject to paragraph (7), the cost at any time of a relevant transaction shall be the lesser of—
- (a) 70 per cent. of the amount which, apart from this regulation, would be the cost of the transaction at that time; and
 - (b) the amount which, apart from this regulation, would be the cost of the transaction at that time minus an amount equal to the product of the formula—

$$\frac{D \times Y}{T}$$

where—

“D” means the relevant deduction determined in relation to the transaction in accordance with paragraph (5);

“T” means the number of years comprising the period over which consideration falls to be given by the authority under the transaction; and

“Y” means the number of years which, at the time in question, comprises the unexpired part of that period.

(7) For the purpose of calculating the initial cost or cost at any time of a relevant transaction, the authority shall disregard any consideration not in money which has been, or falls to be, given by them in respect of the transaction.

Transactions for the provision of a building and heating services

42.—(1) In this regulation—

“qualifying purpose”, in relation to the use of land, means a purpose specified in any of the categories 1 to 6 and 8 and 9 of Schedule 1 to these Regulations, and “category” means one of those categories; and

“relevant transaction” means a private finance transaction to which paragraph (3) applies.

(2) A credit arrangement which is a relevant transaction shall be excluded from section 49(2), and the initial cost and the cost at any time of the transaction shall be calculated in accordance with paragraphs (4) to (6).

(3) This paragraph applies to a private finance transaction where—

- (a) the initial cost of the transaction does not fall to be determined under regulation 40 or 41;
- (b) the asset provided under the transaction consists of, or includes, a building which is on non-housing land and is for use for a qualifying purpose; and
- (c) the services provided in relation to the asset consist of, or include, maintaining and repairing the system for heating the building and providing for the supply of the gas, electricity and fuel required for such heating.

(4) Subject to paragraph (6), the initial cost of a relevant transaction shall be 70 per cent. of the amount which, apart from this regulation, would be the initial cost of the arrangement.

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(5) Subject to paragraph (6), the cost at any time of a relevant transaction shall be 70 per cent. of the amount which, apart from this regulation, would be the cost of the transaction at that time.

(6) For the purpose of calculating the initial cost or cost at any time of a relevant transaction, the authority shall disregard any consideration not in money which has been, or falls to be, given by them in respect of the transaction.