
STATUTORY INSTRUMENTS

1997 No. 319

The Local Authorities (Capital Finance) Regulations 1997

PART X

THE CREDIT CEILING

Modifications of credit ceiling

Interpretation

115. In this Part, “amount set aside” means any amount for the time being set aside by a local authority (whether voluntarily or pursuant to a requirement under Part IV of the Act) as provision to meet credit liabilities.

Credit ceiling on or after 1st April 1997

116. At any time on or after 1st April 1997, a local authority’s credit ceiling shall be determined in accordance with paragraphs 11 to 14 of Schedule 3 to the Act, subject to the modifications prescribed for the purposes of paragraph 10 of that Schedule in the following provisions of this Part.

Credit ceiling not reduced by certain minimum revenue provision

117. A local authority’s credit ceiling shall not be reduced by the setting aside under section 63(1) (duty to set certain amounts aside as provision to meet credit liabilities) of any amount which, for the purposes of regulation 131, is determined by the authority under regulation 137 (use of amounts set aside to meet liabilities under credit arrangements where initial cost was nil).

Credit ceiling increased by use of amount set aside to pay levy on disposals of housing

118. Where a local authority apply an amount set aside to meet any liability in respect of any levy payable under section 136 of the Leasehold Reform, Housing and Urban Development Act 1993 (levy on disposals of dwelling-houses)(**1**), the authority’s credit ceiling shall, at the same time, be increased by an amount equal to the amount so applied.

Credit ceiling not increased by use of amount set aside to meet certain expenditure

- 119.—**(1) For the purposes of this regulation, a local authority are a relevant authority if—
- (a) on the date which is the relevant date for the current financial year, their credit ceiling, as determined under Part III of Schedule 3 to the Act, is a negative amount; and
 - (b) they have no money outstanding by way of borrowing other than disregarded borrowing within the meaning given to that expression in regulation 65.

(1) 1993 c. 28.

(2) In paragraph (1), the reference to the relevant date shall be construed in accordance with section 64(4).

(3) A relevant authority's credit ceiling shall not be increased by the use of credit approvals to any extent as mentioned in section 56(3)(a) in respect of any expenditure where, pursuant to section 64(1)(c), the authority apply an amount set aside to meet that expenditure.

Credit ceilings of combined and superseded fire authorities

120.—(1) In this regulation, “new fire authority” means a fire authority constituted by a combination scheme under the Fire Services Act 1947(2) made in consequence of an order under Part II of the Local Government Act 1992(3) containing provision for giving effect to a structural change (within the meaning given to that expression in that Part).

(2) In relation to a new fire authority and the county council which is superseded as a fire authority by the new fire authority, in addition to the modifications made in regulations 117, 118 and 119, Schedule 3 to the Act is modified by the insertion of the following paragraphs(4)—

“**10G.**—(1) In this paragraph—

“combination scheme” means a combination scheme under the Fire Services Act 1947 made in consequence of an order under Part II of the Local Government Act 1992 containing provision for giving effect to a structural change (within the meaning given to that expression in that Part);

“the council”, in relation to a new fire authority, means the county council which is superseded as a fire authority by the new fire authority;

“excluded fire arrangement” means any credit arrangement which is of a description excluded by regulations made by the Secretary of State under paragraph 11(2)(5), and is transferred to a new fire authority under the provisions of a combination scheme;

“fire arrangement” means any credit arrangement, other than an excluded fire arrangement, which is transferred to a new fire authority under the provisions of a combination scheme;

“first year”, in relation to a new fire authority and the council in relation to that authority, means the financial year in which that authority is constituted; and

“new fire authority” means a fire authority constituted by a combination scheme.

(2) Where, in relation to a new fire authority, the fire services amount for the council on 31st March in the first year is a positive amount, the credit ceiling of the new fire authority on that day shall be increased by that amount, and the credit ceiling of the council on that day shall be reduced by the same amount.

(3) Where, in relation to a new fire authority, the fire services amount for the council on 31st March in the first year is a negative amount, the credit ceiling of the new fire authority on that day shall be reduced by that amount, and the credit ceiling of the council on that day shall be increased by the same amount.

(4) For the purposes of this paragraph—

(2) 1947 c. 41.

(3) 1992 c. 19.

(4) Schedule 3 to the Act was modified by the insertion of paragraphs 10A, 10B, 10C, and 10D, to take account of the establishment of new police authorities, and by the insertion of paragraphs 10E, and 10F to take account of the constitution of combined fire authorities. (See regulation 21 of, and Part II of Schedule 3 to, the 1990 Regulations as amended by S.I. 1995/850, S.I. 1995/1982 and S.I. 1996/568).

(5) See regulations 122 and 123 of these Regulations, and regulation 22 and 22A of the 1990 Regulations (regulation 22A was inserted by S.I. 1996/2539).

- (a) the fire services amount for the council for 31st March in any of the years 1991 to the first year shall be determined—
 - (i) by adding to the fire services amount for the council for 31st March in the immediately preceding year the amount of the fire services increase for the council for the financial year in question; and
 - (ii) by subtracting from the resulting sum the amount of the fire services decrease for the council for that financial year; and
 - (b) the fire services amount for the council for 31st March 1990 shall be nil.
- (5) For the purposes of sub-paragraph (4), the amount of the fire services increase for the council for any financial year is the amount by which their credit ceiling is increased in that year by the use of credit approvals to any extent as mentioned in section 56(3)(b) in respect of their fire arrangements.
- (6) For the purposes of sub-paragraph (4), the amount of the fire services decrease for the council for any financial year is the total of the following amounts—
- (a) 4 per cent. of the fire services amount for the council for 31st March in the financial year immediately preceding the financial year in question;
 - (b) the amount which is applied or charged by the council (as an amount of credit cover) as mentioned in paragraph (b) or (c) of section 50(3) in relation to any excluded fire arrangements; and
 - (c) in relation to any fire arrangements and any excluded fire arrangements, the amount set aside by the council from a revenue account or from the usable part of capital receipts as provision to meet credit liabilities being an amount over and above the aggregate of—
 - (i) the amount referred to in sub-paragraph (b); and
 - (ii) the amount which, in relation to such arrangements, the council are required so to set aside by virtue of any provision of this Act or any regulations made under this Act.”.

Credit ceilings of authorities for National Parks

121.—(1) In this regulation,

“National Park authority” has the same meaning as in article 2 of the National Park Authorities (England) Order 1996(6) ; and

“relevant council”, in relation to a National Park authority, means the council which, pursuant to paragraph 8 of Schedule 17 to the Local Government Act 1972, appointed the National Park Committee for the Park for which the authority is established.

(2) In relation to a National Park authority, the relevant council in relation to that authority, the Lake District Special Planning Board and the Peak Park Joint Planning Board, in addition to the modifications made in regulations 117, 118 and 119, Schedule 3 to the Act is modified by the insertion of the following paragraphs—

10H.—(1) In paragraphs 10I and 10J—

“the Board” means the Lake District Special Planning Board or the Peak Park Joint Planning Board;

“excluded Park arrangement” means any credit arrangement which is of a description excluded by regulations made by the Secretary of State under paragraph 11(2)(7), and vests in a National Park authority by virtue of a relevant agreement or award or by virtue of article 15 of the National Park Authorities (England) Order 1996(8) (“the Order”);

“National Park authority” has the same meaning as in article 2 of the Order;

“Park arrangement” means any credit arrangement, other than an excluded Park arrangement, which vests in a National Park authority by virtue of a relevant agreement or award or by virtue of article 15 of the Order;

“relevant borrowing” means borrowed money which a National Park authority is liable to repay by virtue of a relevant agreement or award or by virtue of article 15 of the Order; and

“relevant council”, in relation to a National Park authority, means the council which, pursuant to paragraph 8 of Schedule 17 to the Local Government Act 1972, appointed the National Park Committee for the Park for which the authority is established;

and in this paragraph, “relevant agreement or award” means an agreement under section 76 of the Environment Act 1995 (agreements as to incidental matters)(9) or an award under subsection (3) of that section.

10I.—(1) Where, in relation to a National Park authority, the specified amount for the relevant council on 31st March 1997 is a positive amount, the credit ceiling of the National Park authority on that day shall be increased by that amount, and the credit ceiling of the relevant council on that day shall be reduced by the same amount.

(2) Where, in relation to a National Park authority, the specified amount for the relevant council on 31st March 1997 is a negative amount, the credit ceiling of the National Park authority on that day shall be reduced by that amount, and the credit ceiling of the relevant council on that day shall be increased by the same amount.

(3) In relation to the National Park authority established for the Park for which a Board was established—

- (a) where the specified amount for the Board on 31st March 1997 is a positive amount, the credit ceiling of the National Park authority on that day shall be increased by that amount; and
- (b) where the specified amount for the Board on 31st March 1997 is a negative amount, the credit ceiling of the National Park authority on that day shall be reduced by that amount.

10J.—(1) For the purposes of paragraph 10I, in relation to a National Park authority—

- (a) the specified amount for the relevant council or a Board on 31st March in any of the years 1991 to 1997 shall be determined—
 - (i) by adding to the specified amount for the council or the Board on 31st March in the immediately preceding year the specified increase for the council or the Board for the financial year in question; and
 - (ii) by subtracting from the resulting sum the specified decrease for the council or the Board for that financial year; and

(7) See regulations 122 and 123 of these Regulations, and regulation 22 and 22A of the 1990 Regulations (regulation 22A was inserted by S.I. 1996/2539).

(8) S.I. 1996/1243; amended by S.I. 1996/2546.

(9) 1995 c. 25.

(b) the specified amount for the relevant council or a Board on 31st March 1990 shall be nil.

(2) For the purpose of sub-paragraph (1), the specified increase for the relevant council or a Board for any financial year is the amount by which their credit ceiling is increased in that year by the use of credit approvals to any extent as mentioned in section 56(3) in respect of—

- (a) their Park arrangements; and
- (b) any expenditure for capital purposes which is defrayed out of relevant borrowing.

(3) For the purposes of sub-paragraph (1), the specified decrease for the relevant council or a Board for any financial year is the total of the following amounts—

- (a) four per cent. of the specified amount for the council or the Board for 31st March in the financial year immediately preceding the financial year in question;
- (b) the amount which is applied or charged by the council or the Board (as an amount of credit cover) as mentioned in paragraph (b) or (c) of section 50(3) in relation to any excluded Park arrangements; and
- (c) in relation to any Park arrangements and any excluded Park arrangements, the amount set aside by the council or the Board from a revenue account or from the usable part of capital receipts as provision to meet credit liabilities being an amount over and above the aggregate of—
 - (i) the amount referred to in sub-paragraph (b); and
 - (ii) the amount which, in relation to such arrangements, the council or the Board are required so to set aside by virtue of any provision of this Act or any regulations made under this Act..”

Excluded credit arrangements

General exclusion for leases of land

122.—(1) In this regulation, in relation to a credit arrangement which is a lease of land (a “lease”)

—
“the authority” means the local authority who become the lessees under the lease; and

“relevant date” means the date on which the authority become the lessees under the lease.

(2) A lease shall be excluded for the purposes of paragraph 11(2) of Schedule 3 to the Act if, on the relevant date, the authority estimate that in every financial year beginning after that date the value of the consideration falling to be given by them in respect of the lease will be not less than the amount which would fall to be paid by them if—

- (a) where they acquired the lease otherwise than by a grant, the lease had been granted on the relevant date for a period equal to the period of the lease which is unexpired on that date;
- (b) the only consideration falling to be given by them for the grant of the lease consisted of annual payments of rent; and
- (c) each such payment had been determined on the relevant date and on the open market.

(3) For the purposes of this regulation, in any case where the consideration in respect of a lease consists, in whole or in part of—

- (a) an undertaking to do or refrain from doing something at a future time (whether specified or not), or
- (b) a right to do or refrain from doing something at a future time,

that consideration shall not be regarded as having been given until the undertaking is performed or, as the case may be, the right is exercised.

Exclusion for private finance transactions

123.—(1) A credit arrangement to which paragraph (2) applies shall be excluded for the purposes of paragraph 11(2) of Schedule 3 to the Act.

(2) This paragraph applies to a credit arrangement where—

- (a) the arrangement is a private finance transaction for the purposes of Part IV of these Regulations;
- (b) paragraph (3) applies to the local authority who enter into the arrangement; and
- (c) as authority to enter into the arrangement, the authority determine to use a supplementary credit approval which applies only for the purposes of the arrangement.

(3) This paragraph applies to a local authority whose credit ceiling, as determined under Part III of Schedule 3 to the Act, is nil or a negative amount at the beginning of the financial year in which the credit arrangement is entered into, and who have no money outstanding by way of borrowing other than disregarded borrowing within the meaning given to that expression in regulation 65.