



# Local Government and Housing Act 1989

## 1989 CHAPTER 42

### PART IV

#### REVENUE ACCOUNTS AND CAPITAL FINANCE OF LOCAL AUTHORITIES

##### *Credit arrangements*

#### **48 Credit arrangements**

- (1) Subject to the following provisions of this section, a local authority shall be taken for the purposes of this Part to have entered into a credit arrangement—
- (a) in any case where they become the lessees of any property (whether land or goods); and
  - (b) in any case (not falling within paragraph (a) above) where, under a single contract or two or more contracts taken together, it is estimated by the authority that the value of the consideration which the authority have still to give at the end of a relevant financial year for or in connection with the provision to the authority of any land, goods or services or any other kind of benefit is greater than the value of the consideration (if any) which the authority were still to receive immediately before the beginning of that financial year; and
  - (c) in any case where the authority enter into a transaction of a description for the time being prescribed for the purposes of this section by regulations made by the Secretary of State;

and, in any such case, the “credit arrangement” is the lease, the single contract or, as the case may be, the two or more contracts taken together.

- (2) The estimate required to be made under paragraph (b) of subsection (1) above shall be made at the time the contract or, as the case may be, the later or last of the contracts constituting the credit arrangement is entered into; and the reference in that paragraph to a relevant financial year is a reference to a financial year which begins after the contract or, as the case may be, the first of the contracts constituting the arrangement was entered into.

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- (3) Subject to section 52 below, references in this Part, other than this section, to a credit arrangement do not apply to a credit arrangement which comes into being before 1st April 1990; and for the purpose of this Part a credit arrangement comes into being—
- (a) where subsection (1)(a) above applies, at the time the local authority become the lessees;
  - (b) where subsection (1)(b) above applies, at the time the contract or, as the case may be, the later or latest of the contracts constituting the arrangement is entered into; and
  - (c) where subsection (1)(c) above applies, at the time the authority enter into the transaction concerned or such other time as may be specified in the regulations concerned.
- (4) Where a contract constitutes, or two or more contracts taken together constitute, a credit arrangement, no account shall be taken under this section of any later contract which has the effect of varying the effect of the contract or, as the case may be, of the two or more contracts taken together.
- (5) A contract is not a credit arrangement to the extent that it is a contract under which a local authority borrows money; and a lease or contract which is excluded from this section by regulations made by the Secretary of State is not a credit arrangement.
- (6) It is immaterial for the purposes of this section whether the consideration given or received by a local authority under any contract is given to or received from the person by whom the land, goods, services or other benefit are in fact provided to the authority; and for the purposes of this section, and any of the following provisions of this Part relating to credit arrangements, in any case where the consideration under a contract 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.
- (7) Where the consideration under a contract consists, in whole or in part, of an option, the estimate required to be made under subsection (1)(b) above shall be made—
- (a) on the assumption that the option will be exercised or, if the option could be exercised in different ways, on the assumption that it will be exercised in each of those ways, and
  - (b) on the assumption that the option will not be exercised,
- and if, on any of those assumptions, the contract would on those estimates constitute, alone or together with one or more other contracts, a credit arrangement, it shall be regarded as doing so regardless of whether the option is or is not in fact exercised; and in this subsection “option” includes any right which is exercisable or not at the discretion of a party to the contract.
- (8) If an existing contract is varied and the variation does not in law itself constitute a contract, it shall be regarded as such for the purposes of this section and, accordingly, subject to subsection (4) above, the existing contract and the variation shall be regarded as two contracts to be taken together.

#### 49 Initial and subsequent cost of credit arrangements

(1) Subject to subsection (3) and section 52 below, for the purposes of this Part the initial cost of a credit arrangement is the amount which, at the time the arrangement comes into being, the local authority estimate will be the aggregate of—

- (a) any consideration which falls to be given by the authority under the arrangement in the financial year in which it comes into being; and
- (b) the value of the consideration falling to be given by the authority under the arrangement in any subsequent financial year, determined in accordance with subsection (2) below.

(2) For each subsequent financial year referred to in subsection (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 under the arrangement in that financial year;

“r” is the percentage rate of discount prescribed for the financial year in which the arrangement came into being by regulations made by the Secretary of State for the purposes of this section; 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 came into being (so that the first of the subsequent financial years is 1, the next financial year is 2, and so on).

(3) Subsection (2) above does not apply to a credit arrangement of a description excluded from that subsection by regulations made by the Secretary of State; and, in relation to a credit arrangement which is so excluded, regulations so made shall make provision for the method of calculating the initial cost and the cost of the arrangement at any time.

(4) Subject to subsection (3) above and sections 51 and 52 below, the cost of a credit arrangement at any time after it has come into being shall be determined in accordance with subsections (1) and (2) above (in like manner as the determination of the initial cost) 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 under the arrangement before that time.

(5) In the application of this section to a credit arrangement which consists, in whole or in part, of a contract, the consideration under which falls within subsection (7) of section 48 above,—

- (a) if the credit arrangement exists only on the basis of one of the assumptions in that subsection, the local authority shall make that assumption for the purposes of this section; and
- (b) if the credit arrangement would exist on the basis of any two or more of those assumptions, the authority shall for the purposes of this section make whichever of those assumptions seems to them most likely.

## **50 Limits on powers to enter into credit arrangements**

- (1) A local authority may not enter into a credit arrangement for any purpose unless, if they incurred expenditure for that purpose, it would be expenditure for capital purposes, and any reference in the following provisions of this Part to “capital purposes”, in relation to a credit arrangement, shall be construed accordingly.
- (2) A local authority may not enter into a credit arrangement unless, at the time the arrangement comes into being, there is available to the authority an amount of credit cover equal to the initial cost of the arrangement.
- (3) For the purposes of this section, each of the following amounts constitutes, in relation to a credit arrangement, an amount of credit cover available to a local authority,—
  - (a) an amount for the time being authorised by a credit approval issued to the authority;
  - (b) an amount of the usable part of capital receipts which, in accordance with a determination under section 60(2) below referring to the arrangement, is applied by the authority as provision to meet credit liabilities; and
  - (c) an amount which, in accordance with a determination of the authority referring to the arrangement, is set aside from a revenue account by the authority as provision to meet credit liabilities (being an amount over and above what they are required so to set aside by virtue of any other provision of this Part).
- (4) A local authority may not enter into a credit arrangement at any time if to do so would at that time cause the total referred to in section 44(1) above to exceed the aggregate credit limit for the time being applicable to the authority by virtue of section 62 below.
- (5) A determination under subsection (3)(c) above may not be made later than 30th September in the financial year following that in which falls the time when there comes into being the credit arrangement for which the credit cover is made available.
- (6) Except in so far as they are applied by section 52 below, the preceding provisions of this section do not apply in relation to a transitional credit arrangement.

## **51 Variation of credit arrangements**

- (1) This section (other than subsection (10) below) applies where the terms of a credit arrangement entered into by a local authority are varied (whether by the making of a new contract or otherwise) in such a way that, if the effect of the variation had been part of the arrangement at the time it came into being, the initial cost would have been greater than it was.
- (2) If, in the case of a credit arrangement falling within subsection (5) of section 49 above,
  - (a) the option in question is exercised in a way different from that which was assumed for the purposes of that section, or
  - (b) it was assumed for the purposes of that section that the option in question would not be exercised but it is in fact exercised,

the exercise of the option shall be regarded for the purposes of this section as a variation of the terms of the credit arrangement; and if, in such a case, it was assumed for the purposes of section 49 above that the option would be exercised (or would be exercised in a particular way) and it subsequently appears to the local authority that it will not in fact be exercised, the option shall be assumed to have been abandoned

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and that abandonment shall be regarded for the purposes of this section as a variation of the terms of the credit arrangement.

- (3) A local authority may not at any time agree to such a variation as is mentioned in subsection (1) above if to do so would mean that, immediately after the variation, the total referred to in section 44(1) above would exceed the aggregate credit limit for the time being applicable to the authority by virtue of section 62 below.
- (4) Where a credit arrangement is varied as mentioned in subsection (1) above, the local authority shall secure that there is available to it an amount of credit cover equal to whichever is the less of—
  - (a) the difference between the total amount of consideration paid and payable under the arrangement, disregarding the variation and the total amount of the consideration paid and payable under the arrangement as varied; and
  - (b) the difference between the adjusted cost of the arrangement and the credit cover already made available in connection with the arrangement in accordance with section 50 above;

and subsections (3) and (5) of section 50 above apply for the purposes of this section as they apply for the purposes of that section, except that, in subsection (5), the reference to the time when the arrangement comes into being shall be construed as a reference to the time when it is varied.

- (5) Subject to subsection (7) below, the adjusted cost of the arrangement referred to in subsection (4)(b) above is 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; 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 determined as follows.

- (6) Subject to subsection (7) below, for any subsequent financial year the cost of the arrangement as varied shall be determined by the formula in section 49(2) above 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 above;

“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).

- (7) Subsections (5) and (6) above do not apply in relation to a credit arrangement as to which the method of calculating the initial cost and the cost at any time is provided for by regulations under section 49(3) above; and any adjusted cost or cost which would otherwise fall to be determined in accordance with those subsections shall be determined in accordance with provisions made by the regulations.

- (8) Where a credit arrangement is varied as mentioned in subsection (1) above, the cost of the arrangement at any time after the variation shall be determined in accordance with subsections (5) and (6) above (in like manner as the determination of the adjusted cost)

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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 under the arrangement before that time.

- (9) If, at any time after the terms of a credit arrangement have been varied as mentioned in subsection (1) above, the terms of the arrangement are again varied, the preceding provisions of this section shall have effect with any necessary modifications and, in particular, as if,—
- (a) the reference in subsection (1) above to the time the arrangement came into being were a reference to the time at which the arrangement was varied (or, as the case may be, last varied) as mentioned in that subsection;
  - (b) the reference in that subsection to the initial cost were a reference to the adjusted cost of the arrangement as so varied (or last varied); and
  - (c) the reference in paragraph (b) of subsection (4) above to the credit cover already made available in accordance with section 50 above included a reference to any additional credit cover made available under that subsection at the time of an earlier variation.
- (10) If at any time the terms of a credit arrangement are varied otherwise than as mentioned in subsection (1) above, then, so far as the variation affects the consideration falling to be paid by the local authority in any year, account shall be taken of the variation in determining the cost of the arrangement at any subsequent time (under subsection (8) above or subsection (3) or subsection (4) of section 49 above) but for other purposes the variation shall be disregarded.

## **52 Transitional credit arrangements**

- (1) Subject to the following provisions of this section, a local authority shall be taken to have entered into a transitional credit arrangement if, applying the rules in section 48(3) above, the arrangement came into being on or after 7th July 1988 and before 1st April 1990; and, except in so far as any provision of this Part otherwise provides, any reference in this Part to a credit arrangement includes a reference to a transitional credit arrangement.
- (2) Notwithstanding that a credit arrangement came into being as mentioned in subsection (1) above it is not a transitional credit arrangement if—
- (a) under the arrangement the local authority concerned became the lessees of any property (whether land or goods) and the arrangement was a credit arrangement by reason only of section 48(1)(a) above; or
  - (b) by virtue of subsection (11) or subsection (12) of section 80 of the Local Government, Planning and Land Act 1980 (valuation etc.) the amount of prescribed expenditure which the authority is to be taken as having paid on entering into the arrangement was nil; or
  - (c) by virtue of regulations under paragraph 4 of Schedule 12 to that Act, any expenditure of the authority under the arrangement was not prescribed expenditure; or
  - (d) the arrangement related only to works which, in whole or in part, were carried out before 1st April 1990 and in relation to which, by reason only of regulations under subsection (7) of section 80A of that Act (payment for works), subsection (1) of that section did not apply or, to the extent that the works were carried out on or after that date, would not have applied if they had been carried out before that date.

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- (3) For the purpose of the application of sections 49 and 51 above in relation to a transitional credit arrangement—
- (a) such an arrangement shall be taken to have come into being (in the form in which it was on 1st April 1990) on that date (and, accordingly, any consideration given under the arrangement before that date shall be disregarded); and
  - (b) the local authority shall be taken to have made available in connection with the arrangement (and in accordance with section 50 above) an amount of credit cover equal to the cost of the arrangement on 1st April 1990.