
STATUTORY INSTRUMENTS

1996 No. 2539

LOCAL GOVERNMENT, ENGLAND AND WALES

**The Local Authorities (Capital Finance)
(Amendment No. 3) Regulations 1996**

<i>Made</i>	- - - -	<i>7th October 1996</i>
<i>Laid before Parliament</i>		<i>8th October 1996</i>
<i>Coming into force</i>	- -	<i>31st October 1996</i>

The Secretary of State for the Environment, as respects England, and the Secretary of State for Wales, as respects Wales, in exercise of the powers conferred on them by sections 49(3), 61(4) and 190(1) of, and paragraph 11(2) of Schedule 3 to, the Local Government and Housing Act 1989(1), and of all other powers enabling them in that behalf, hereby make the following Regulations:

Commencement and citation

1. These Regulations may be cited as the Local Authorities (Capital Finance) (Amendment No. 3) Regulations 1996 and shall come into force on 31st October 1996.

Amendment of Regulations

2. The Local Authorities (Capital Finance) Regulations 1990(2) shall be amended in accordance with the provisions of these Regulations.

Initial and subsequent cost of credit arrangements

3.—(1) In regulation 7 —

- (a) in paragraph (1), after “any such credit arrangement,” insert “unless it is a specified lease”, and omit the words “or regulation 7A below”;
- (b) in paragraph (6)(a), after “(5K) above” insert “and is not a specified lease”, and in paragraph (6)(c), after “were granted by” insert “a specified lease or”;
- (c) in paragraph (7), for the words “not falling” substitute “which is not a specified lease and does not fall”, and omit the words “or regulation 7A below”;

(1) 1989 c. 42.

(2) S.I.1990/432; amended by S.I. 1996/568. There are other amendments not relevant to these Regulations.

- (d) in paragraph (10A), for the word “falling” substitute “which is not a specified lease and which falls”, and omit the words “or regulation 7A below”; and
 - (e) in paragraph (11), after “In this regulation —” insert the following —
 - ““specified lease” means a lease which is a relevant transaction or is one of two or more credit arrangements which, taken together, constitute a relevant transaction within the meaning of regulation 7C, 7D or 7E;”
- (2) Omit regulation 7A.

Initial and subsequent cost of other credit arrangements

4.—(1) In regulation 7B(5), in the definition of “i”, for “Central Statistical Office” substitute “Office for National Statistics”, and for “factor cost” substitute “market prices”.

- (2) After regulation 7B insert the following regulations —

“7C.—(1) In this regulation, in relation to a transaction to which paragraph (4) below applies (a “relevant transaction”) —

“the authority” means the local authority who enter into the transaction;

“the initial cost” means the initial cost of the credit arrangement which constitutes the transaction, or the aggregate of the initial costs of the credit arrangements which, taken together, constitute the transaction;

“relevant financial year” means the financial year in which the credit arrangement which constitutes the transaction, or the later or latest of the credit arrangements which, taken together, constitute the transaction, is entered into, and any subsequent financial year in which fees fall to be paid under the transaction; and

“relevant land” means land, other than land, houses or other property which, if acquired by a local authority, would be land to which section 74(1) would apply.

“7C.—(2) A credit arrangement 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 arrangement is a relevant transaction or is one of two or more credit arrangements which, taken together, constitute a relevant transaction; 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) above, in relation to a relevant 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 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.

- (4) This paragraph applies to a transaction where —

- (a) the consideration received by the authority under the transaction includes the provision of —
 - (i) relevant land or any other asset which is not land (“the asset”) for use for, or in connection with, the exercise of a function of the authority (“the relevant purpose”); and
 - (ii) services which 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;
- (b) the authority do not give to any person any undertaking or guarantee in respect of any obligations or liabilities of the person with whom they enter into the transaction (whether incurred under the transaction or otherwise);
- (c) the consideration given by the authority under the transaction includes the payment of fees by instalments at annual or more frequent intervals;
- (d) the fees are determined in accordance with provisions relating to —
 - (i) standards attained in the performance of the services; or
 - (ii) the extent, rate or intensity of use of the asset for the relevant purpose;
- (e) the first instalment of fees falls to be paid after the authority have begun to use the asset for the relevant purpose; and
- (f) the terms agreed for the transaction do not provide for any variation in the amount of fees payable, other than variation under —
 - (i) the provisions mentioned in sub-paragraph (d) above; and
 - (ii) any provision agreed for increasing the fees by reference to the figure in Table 2.1 of Economic Trends⁽³⁾ 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.

7D.—(1) In this regulation, in relation to a transaction to which paragraph (3) below applies (a “relevant transaction”) —

“the authority” means the local authority who enter into the 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;

“the initial cost” means the initial cost of the credit arrangement which constitutes the transaction, or the aggregate of the initial costs of the credit arrangements which, taken together, constitute the transaction;

“old building” means the relevant building in respect of which the authority make a decision such as is mentioned in paragraph (3)(a) below; 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 2 to these Regulations, and “category” means one of those categories;

“relevant building” means a building —

(3) Available from the Office of National Statistics or from SO .

- (a) which is situated on relevant 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 for a period of not less than 99 years; and

“relevant land” means land, other than land, houses or other property which, if acquired by a local authority, would be land to which section 74(1) would apply.

(2) A credit arrangement which is a relevant transaction or is one of two or more credit arrangements which, taken together, constitute 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) below.

(3) This paragraph applies to a transaction, other than a relevant transaction within the meaning of regulation 7C, where —

- (a) 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;
- (b) the consideration received by the authority under the transaction includes the provision of —
 - (i) the new building, or, as the case may be, the works of enhancement of the relevant building; and
 - (ii) services which 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;
- (c) the authority do not give to any person any undertaking or guarantee in respect of any obligations or liabilities of the person with whom they enter into the transaction (whether incurred under the transaction or otherwise);
- (d) the consideration given by the authority under the transaction includes the payment of fees by instalments at annual or more frequent intervals;
- (e) the fees are determined in accordance with provisions relating to —
 - (i) standards attained in the performance of the services; or
 - (ii) the extent, rate or intensity of use of the new building for the corresponding purpose;
- (f) the first instalment of fees falls to be paid after the authority have begun to use the new building for the corresponding purpose; and
- (g) the terms agreed for the transaction do not provide for any variation in the amount of fees payable, other than variation under —
 - (i) the provisions mentioned in sub-paragraph (e) above; and
 - (ii) any provision agreed for increasing the fees by reference to 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.

(4) Subject to paragraph (7) below, 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) above the relevant deduction is the amount which would be the initial cost of the transaction assuming that —

- (a) the transaction consisted of a single credit arrangement in relation to which 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 —

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

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 regulation 49(2).

(6) Subject to paragraph (7) below, 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) above;

“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.

7E.—(1) In this regulation, in relation to a transaction to which paragraph (3) below applies (a “relevant transaction”) —

“the authority” means the local authority who enter into the transaction;

“the initial cost” means the initial cost of the credit arrangement which constitutes the transaction, or the aggregate of the initial costs of the credit arrangements which, taken together, constitute the transaction;

“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 2 to these Regulations, and “category” means one of those categories; and

“relevant land” means land, other than land, houses or other property which, if acquired by a local authority, would be land to which section 74(1) would apply.

(2) A credit arrangement which is a relevant transaction or is one of two or more credit arrangements which, taken together, constitute 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) below.

(3) This paragraph applies to a transaction, other than a relevant transaction within the meaning of regulation 7C or 7D, where —

(a) the consideration received by the authority under the transaction includes the provision —

(i) for use for a qualifying purpose, of a building on relevant land; and

(ii) of services which 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;

(b) the authority do not give to any person any undertaking or guarantee in respect of any obligations or liabilities of the person with whom they enter into the transaction (whether incurred under the transaction or otherwise);

(c) the consideration given by the authority under the transaction includes the payment of fees by instalments at annual or more frequent intervals;

(d) the fees are determined in accordance with provisions relating to —

(i) standards attained in the performance of the services; or

(ii) the extent, rate or intensity of use of the building for the qualifying purpose;

(e) the first instalment of fees falls to be paid after the authority have begun to use the building for the qualifying purpose; and

(f) the terms agreed for the transaction do not provide for any variation in the amount of fees payable, other than variation under —

(i) the provisions mentioned in sub-paragraph (d) above; and

(ii) any provision agreed for increasing the fees by reference to 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.

(4) Subject to paragraph (6) below, 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.

(5) Subject to paragraph (6) below, 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..”

Capital receipts not wholly in money paid to the authority

5. In regulation 20, for paragraph (3B) substitute the following paragraph —

“(3B) In the case of non-monetary consideration which —

(a) is received by a local authority in respect of the disposal of an interest in land under or in connection with a relevant transaction within the meaning of regulation 7C, 7D, or 7E above; and

(b) is consideration received by the authority under that transaction,
the reserved part of the notional capital receipt shall be nil.”

Excluded credit arrangements

6. After regulation 22 insert the following regulation —

“**22A.**—(1) A credit arrangement to which paragraph (2) below 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) paragraph (3) below applies to the local authority who enter into the arrangement;

(b) 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; and

(c) the initial cost and the cost at any time in relation to the arrangement would be nil by virtue of regulation 7C if that regulation had been amended, before the date on which the authority enter into the arrangement, by the omission of paragraph (2) (b) and paragraph (3).

(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 —

(a) short-term borrowing (within the meaning of section 45(6));

(b) borrowing undertaken under section 5 of the City of London (Various Powers) Act 1924;(4) or

(c) borrowing undertaken before 24th August 1995, other than borrowing by the issue of stock on or after 15th December 1993, from a person who is not a relevant lender.

(4) In paragraph (3) above, “relevant lender” means the Public Works Loan Board, the Bank of England, the European Investment Bank, a body mentioned in any of paragraphs 1 to 17, or in paragraph 28 or 29, of Part II of the Schedule to the Local Authorities (Capital Finance) (Approved Investments) Regulations 1990(5), an authorised institution within

(4) 1924 c.xxxvii. Section 5 was repealed by section 40(1) of the [City of London \(Various Powers\) Act 1960 \(c.xxxvi\)](#).

(5) S.I. 1990/426; amended by S.I. 1991/501, S.I. 1992/1353, S.I. 1995/850 and S.I. 1995/1982.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

the meaning of the Banking Act 1987(6) or a building society within the meaning of the Building Societies Act 1986(7).”.

Signed by authority of the Secretary of State for the Environment

Department of the Environment
3rd October 1996

Paul Beresford
Parliamentary Under Secretary of State,

7th October 1996

William Hague
Secretary of State for Wales

(6) 1987 c. 22.
(7) 1986 c. 53.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations further amend the Local Authorities (Capital Finance) Regulations 1990 for purposes connected with the Private Finance Initiative.

Regulation 4 makes provision in respect of the initial cost of a credit arrangement which is a transaction (“a relevant transaction”) of one of three specified descriptions, or is one of two or more arrangements which, taken together, constitute such a transaction. If specified conditions are met, the initial cost of such a credit arrangement will be either nil or reduced. The first transaction described (the new regulation 7C) is for the provision of any asset (including land). The second (the new regulation 7D) is for the provision of a building or of works on a building. The third (the new regulation 7E) is for the provision of a building.

The main features of a relevant transaction are that —

- (a) it involves the provision of services required for the maintenance and repair of the asset or building concerned;
- (b) if it is for the provision of land or a building or works on a building, the land or building is not for use for housing purposes;
- (c) the consideration given by the authority includes the payment of fees by instalments, and the first instalment does not fall to be paid until after the authority have begun to use the asset or building concerned; and
- (d) the amount of fees payable depends on standards attained in the performance of the services or the extent, rate or intensity of use of the asset or building concerned for its intended purpose.

The provision made in regulation 3 takes account of the fact that a credit arrangement falling within the provisions in regulation 4 may be a lease.

Regulation 5 makes provision for cases where the consideration given by a local authority under a relevant transaction includes a disposal of an interest in an asset. In the case of the non-monetary consideration received for the disposal, the reserved part of the notional capital receipt is nil.

Regulation 6 provides that, in determining a local authority’s credit ceiling, no account is to be taken of a credit arrangement if —

- (a) a supplementary credit approval has been issued for the purposes only of the arrangement;
- (b) the arrangement would, under specified circumstances, (which relate to one of the provisions in regulation 4) have an initial cost of nil; and
- (c) the authority’s credit ceiling, as determined under Schedule 3 to the Local Government and Housing Act 1989, is nil or a negative amount at the beginning of the financial year in which the arrangement is entered into, and the authority (subject to specified exceptions) have no money outstanding by way of borrowing.