
STATUTORY INSTRUMENTS

1997 No. 319

The Local Authorities (Capital Finance) Regulations 1997

PART IV

CREDIT ARRANGEMENTS

Other leases

Leases having an initial cost which includes consideration under earlier lease

35.—(1) In this regulation—

“dwelling-house” has the same meaning as in Part IV of the Housing Act 1985 (secure tenancies and rights of secure tenants);

“excluded tenancy” means a tenancy or licence to occupy a dwelling-house which, for the purposes of Part IV of the Housing Act 1985, was excluded from being a secure tenancy by virtue of paragraph 4 (accommodation for homeless persons)(1) or paragraph 6 (short-term arrangements) of Schedule 1 to that Act; and

“relevant lease” means any lease of land other than a lease of a dwelling-house which—

- (i) was, at any time after 31st March 1990 and before 1st April 1997, let or occupied under an excluded tenancy; or
- (ii) has, at any time after 31st March 1997, been used by the authority or any other local authority to provide accommodation in the exercise of their functions under Part VII of the Housing Act 1996 (homelessness).

(2) Subject to regulations 37 and 38, where in relation to a relevant lease of land—

- (a) the initial cost does not fall to be determined under any of regulations 28 to 34,
- (b) the authority had an earlier leasehold interest (“the preceding interest”) in the whole or part of the land, and
- (c) the authority acquired the preceding interest on or after 1st April 1990 under a lease of which the initial cost was nil by virtue of these Regulations or the 1990 Regulations(2),

the initial cost shall be the aggregate of the capital cost of the relevant lease and the value of the consideration given by the authority in respect of the preceding interest.

Leases of other descriptions

36.—(1) Subject to regulations 37 and 38, where the initial cost of a lease of land does not fall to be determined under any of regulations 28 to 35, the initial cost of the lease shall be the capital cost of the lease.

(2) The initial cost of a lease of goods shall be the capital cost of the lease.

(1) Paragraph 4 was substituted as from 20th January 1997 by paragraph 3 of Schedule 17 to the Housing Act 1996 (c. 52).

(2) See regulation 7 of the 1990 Regulations.

Leases under private finance transactions—leases not falling with regulation 28

37.—(1) Where, in relation to a lease of land, the authority become the lessees under the provisions of a private finance transaction, and the initial cost of that transaction falls to be determined under regulation 41, the initial cost (if it is not nil by virtue of any other provision of this Part) shall be lesser of—

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

(2) For the purposes of paragraph (1)(b), the relevant deduction is the amount, if any, by which amount A exceeds amount B where—

“amount A” means the amount of the relevant deduction determined under regulation 41(5) for the private finance transaction in question; and

“amount B” means the amount which, apart from regulation 41, would be the initial cost of that transaction.

(3) Where, in relation to a lease of land, the authority become the lessees under the provisions of a private finance transaction, and the initial cost of that transaction falls to be determined under regulation 42, the initial cost (if it is not nil by virtue of any other provision of this Part) shall be 70 per cent. of the amount which, apart from this regulation, would be the initial cost of the lease.

Reduction in the initial cost of certain leases

38.—(1) For the purposes of this regulation—

- (a) a lease is a relevant lease if it is a lease of land and its initial cost falls to be determined under regulation 35, 36 or 37;
- (b) “old lease” means a lease of which the initial cost fell to be determined under regulation 35, 36 or 37 or paragraph (6) or (7) of regulation 7, or regulation 7A, of the 1990 Regulations⁽³⁾; and
- (c) “relevant time”, in relation to an old lease, means the time when the authority’s interest in the lease ceases other than by reason of the expiry of the term of the lease.

(2) A local authority who become the lessees under a relevant lease may reduce the amount which, apart from this regulation, would be the initial cost of that lease by an amount not exceeding the balance of the released credit cover in relation to an old lease.

(3) In paragraph (2), the balance of the released credit cover in relation to an old lease is an amount determined by the authority by—

- (a) estimating, at the relevant time and on the assumptions specified in paragraph (4), the initial cost of a new lease of the land demised by the old lease; and
- (b) subtracting from that estimate any amount which the authority have already applied out of that estimate in reduction under paragraph (2) of the initial cost of a lease other than the relevant lease concerned.

(4) The assumptions specified for the purposes of paragraph (3) are—

- (a) that the term of the new lease was equal to the term of the old lease less the expired portion of that term;
- (b) that the initial cost of the new lease would fall to be determined under regulation 36;
- (c) that apart from the term of the new lease, the new lease was identical to the old lease; and

(3) Regulation 7A was inserted by [S.I. 1996/568](#) and revoked by [S.I. 1996/2539](#).

- (d) that the initial cost of the new lease fell to be calculated at the time when the initial cost of the old lease was calculated.

Cost at any time of certain leases

39. Where a local authority become the lessees under a lease of which the initial cost falls to be determined under regulation 35, 36 or 37, the cost of the lease at any time shall be the amount which would be the capital cost of the lease, if it was entered into at the time in question, on the basis of an estimate made at that time and disregarding any consideration given by the authority in respect of the lease before that time.