



# Local Government in Scotland Act 2003

## 2003 asp 1

### PART 1

#### BEST VALUE AND ACCOUNTABILITY

##### *Relaxation of rules about contracts and supply of goods and services*

#### **7 Local authority contracts: relaxation of exclusion of non-commercial considerations**

(1) The following provisions of section 17(5) of the Local Government Act 1988 (c. 9) (the “1988 Act”) do not operate in relation to a local authority in any of the cases specified in subsection (2) below—

paragraph (a) (which provides that the terms and conditions of employment of, and certain other arrangements affecting, contractors' workers are to be disregarded by authorities when exercising certain functions relating to public supply or works contracts);

paragraph (b) (which provides that the question whether contractors subcontract to self-employed individuals on a services-only basis is to be likewise disregarded); and

paragraph (d) so far as relating to the conduct of contractors or their workers in industrial disputes between them (which paragraph provides that such conduct is to be likewise disregarded).

(2) Those cases are—

- (a) where the local authority reasonably seeks to ensure that a contractor with the authority will comply with the contractor's obligations under the contract;
- (b) where the local authority reasonably seeks to ensure that a contractor with the authority will perform the contractor's obligations under the contract in a way which will not prevent the authority from securing best value or hinder it in doing so; and
- (c) where the local authority has reasonable grounds for believing that the trade contractor's implementation of the contract with the authority would entail a relevant transfer within the meaning of the Transfer of Undertakings (Protection of Employment) Regulations 1981 (S.I. 1981/1794) or any regulations replacing those regulations, as from time to time amended.

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- (3) Section 17(5)(h) of the 1988 Act (which provides that the use or non-use by contractors of services provided under the Building (Scotland) Act 1959 (c. 24) is to be disregarded by authorities when exercising certain functions relating to public supply or works' contracts) ceases to have effect in relation to local authorities.
- (4) In this section, “contractor” has the same meaning as in section 17 of the 1988 Act.

## **8 Relaxation of restrictions on supply of goods and services etc. by local authorities**

- (1) The Local Authorities (Goods and Services) Act 1970 (c. 39) is modified as provided in subsections (2) and (3) below.
- (2) In section 1 (supply of goods and services etc. by local authorities to public bodies)—
- (a) in subsection (1)—
    - (i) for “public body within the meaning of this section” and “body”, wherever subsequently occurring, there is, in each case, substituted “person”;
    - (ii) after “may”, where it first occurs, there is inserted “, in relation to any relevant trading operation carried on by the authority,”;
    - (iii) in paragraph (b), the words “administrative, professional or technical” are repealed;
    - (iv) in paragraph (c), for “vehicle, plant or apparatus belonging to” there is substituted “property belonging to or facilities under the control of” and for “vehicle or other property” there is substituted “property or facility”; and
    - (v) paragraph (d) and the words which follow it are repealed;
  - (b) after that subsection there is inserted—
 

“(1A) A local authority shall not, in relation to any trading operation carried on by them, enter into an agreement under subsection (1) above if the likely result of doing so would be that the commercial services income accruing to the authority in any financial year under that and all other such agreements already entered into by the authority with such persons in relation to that operation would exceed the statutory limit.

(1B) Subsection (1A) above does not apply in respect of an agreement entered into by a local authority with—

    - (a) another local authority;
    - (b) a public authority or body; or
    - (c) a person who, in the circumstances set out in subsection (1L) below, enters into the contract in order to provide the local authority with goods or services,

or with a person who, not being a public body, has functions of a public nature or engages in activities of that nature and the purpose or effect of the agreement is to facilitate discharge by that person of those functions or that person’s engagement in those activities.

(1C) The restriction in subsection (1A) does not prevent a local authority from entering into an agreement where the likely result of doing so would be that the income referred to in that subsection will exceed

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the limit there referred to if the Scottish Ministers give prior consent to the authority doing so.

(1D) In subsection (1A) above—

- (a) the “commercial services” income of a local authority is that part of their income which—
  - (i) is derived from agreements entered into for all or any of the purposes set out in subsection (1) above and is, in accordance with proper accounting practices, credited to a trading account kept by the authority for a trading operation;
  - (ii) is derived from relevant dividends; or
  - (iii) is derived from relevant profit sharing agreements;and
- (b) the “statutory limit” for a trading operation is such amount as the Scottish Ministers may, by order, fix.

(1E) For the purposes of subsection (1D) above—

“relevant dividend” means a dividend paid by a body corporate which carries on operations which, if they were carried on by the authority to which the dividend is paid, would be relevant trading operations;

“relevant profit sharing agreement” means an agreement between a local authority and a body corporate which carries on such operations in terms of which the body corporate undertakes to pay to the authority a proportion of any income which it derives from carrying out those operations.

(1F) An amount so fixed may be expressed as a fraction of any other amount specified or referred to in the order.

(1G) Different amounts may be so fixed for different trading operations or classes of trading operation, and an amount may be so fixed for all trading operations.

(1H) Where, for any trading operation, no amount has been so fixed, the prohibition in subsection (1A) above applies, the condition of its application set out in that subsection being ignored.

(1I) If, however, in the case of a trading operation for which no amount has been fixed, the Scottish Ministers give prior consent to a local authority entering into an agreement under subsection (1) above in relation to that trading operation, that prohibition does not apply.

(1J) An order under subsection (1D)(b) above shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.

(1K) Before making such an order, the Scottish Ministers shall consult such persons as they think fit.

(1L) The circumstances referred to in paragraph (c) of subsection (1B) above are that the local authority considers that the provision of the goods or services under the contract mentioned in that paragraph will

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be facilitated if the person who has entered into the contract is within that paragraph.

(1M) A local authority shall, before entering any such agreement as is referred to in subsection (1) above, have regard to whether doing so will be likely to promote or improve the well-being of—

- (a) their area and persons within that area;
- (b) either of those.

(1N) For the purposes of subsection (1M) above, “well-being” is to be construed in the same way as it is construed for the purposes of section 20 of the Local Government in Scotland Act 2003 (asp 1).

(1O) References in this section to a trading operation are, in relation to a local authority, references to a trading operation for which, in accordance with proper accounting practices (within the meaning of section 12 of the Local Government in Scotland Act 2003 (asp 1)) the authority keep trading accounts.

(1P) The reference in subsection (1) above to a relevant trading operation is a reference to a trading operation which is carried on for the purpose of enabling a local authority to raise money, by borrowing or otherwise.”;

(c) in subsection (2)—

- (i) for the words “preceding subsection” there is substituted “subsection (1) above”;
- (ii) paragraph (a) and the word “or” which immediately follows it are repealed;
- (iii) after “property” there is inserted “, goods or materials”; and
- (iv) after “except” there is inserted “(i)” and at the end there is inserted “;
  - (i) for the purpose of enabling the authority to supply the property, goods or materials or, as the case may be, provide the service to another authority;
  - (ii) in the case of the supply of goods or materials, where that supply is for the purpose of, or is incidental to the purpose of, enabling the authority to supply property or, as the case may be, provide a service; or
  - (iii) in any other case, where the Scottish Ministers have consented to the supply or provision.”;

(d) in subsection (4)—

- (i) the definitions of “public body” and “works of maintenance” are repealed; and
- (ii) in their place there is inserted—
  - “property” includes land, accommodation, vehicles, plant and apparatus;”; and

(e) subsections (5) and (6) are repealed.

(3) In section 2 (supplemental)—

- (a) in subsection (1) for “public body” there is substituted “person”; and

- (b) subsections (4) and (5) are repealed.

## **9 Special provision for local authority contracts for construction of buildings or works**

- (1) A local authority may, in accordance with regulations made under this section, enter into an agreement with any person for the construction or maintenance by the authority of any buildings or works.
- (2) The Scottish Ministers may make regulations—
- (a) restricting the exercise of the power under subsection (1) above by reference to the likely gross expenditure of the local authority in any financial year occasioned by its exercise of the power when taken together with the likely gross expenditure of the authority in that year on—
    - (i) all other construction of building or works; and
    - (ii) all works of maintenance of land or buildings, undertaken by the authority, and
  - (b) otherwise prescribing how local authorities are to exercise the power.
- (3) Those regulations may, under subsection (2)(b) above, provide that any code or other document referred to in the regulation is to have effect for the purpose of regulating the exercise of the power under subsection (1) above.
- (4) Those regulations may include provision for the making of reports to the Scottish Ministers and to the public on the exercise of the power under subsection (1) above.
- (5) Those regulations may make different provision for different authorities or different classes of authority.
- (6) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (7) Before making any such regulations, the Scottish Ministers shall consult such associations of local authorities and such other persons as they think fit.

## **10 Trading operations and accounts**

- (1) It is the duty of a local authority to conduct each of its significant trading operations so that, as respects that operation—
- (a) in relation to every three year period; and
  - (b) taking every year with the two previous years, revenue is not less than expenditure.
- (2) In subsection (1) above, the references to a local authority's significant trading operations are references to those of its trading operations for which it must, in accordance with proper accounting practices, disclose trading accounts and, in this subsection, "proper accounting practices" is to be construed in accordance with section 12(2) below.