



# Local Government Act 1992

## 1992 CHAPTER 19

### PART I

#### CITIZEN'S CHARTER PROVISIONS

*Performance standards of local authorities etc.*

#### **1 Publication of information as to standards of performance**

- (1) The Audit Commission and the Scottish Accounts Commission shall each give such directions as it thinks fit for requiring relevant bodies to publish such information relating to their activities in any financial year as will, in that Commission's opinion, facilitate the making of appropriate comparisons (by reference to the criteria of cost, economy, efficiency and effectiveness) between—
  - (a) the standards of performance achieved by different relevant bodies in that financial year; and
  - (b) the standards of performance achieved by such bodies in different financial years.
- (2) Where a relevant body are required by a direction under this section to publish information in relation to any financial year, it shall be the duty of that body—
  - (a) to make such arrangements for collecting and recording the information as secure that the information is available for publication and, so far as practicable, that everything published in pursuance of the direction is accurate and complete;
  - (b) within the period of nine months beginning with the end of that financial year, to publish the information, in accordance with the direction, in a newspaper circulating in the area of that body; and
  - (c) to keep a document containing any information published in pursuance of the direction available for inspection by interested persons.
- (3) The Secretary of State may by order made by statutory instrument vary the period for the time being specified in paragraph (b) of subsection (2) above so as to fix the latest

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time for the publication of information in accordance with that paragraph at any such time, within the period of nine months after the end of the financial year in question, as may be specified in the order; and a statutory instrument containing an order under this subsection shall be subject to annulment in pursuance of a resolution of either House of Parliament.

- (4) An interested person shall be entitled—
- (a) at all reasonable times and without payment, to inspect and make copies of the whole or any part of a document kept available for inspection under subsection (2)(c) above; and
  - (b) to require copies of the whole or a part of any such document to be delivered to him on payment of a reasonable sum for each copy.
- (5) Any person having custody of any document kept available for inspection under subsection (2)(c) above who—
- (a) obstructs a person in the exercise of his rights under subsection (4) above; or
  - (b) refuses to comply with a requirement under subsection (4)(b) above,
- shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.
- (6) References in this section to an interested person, in relation to any document which is required to be kept available by a relevant body in England and Wales, are references to any local government elector (within the meaning of the 1972 Act) for the area of that body.
- (7) References in this section and sections 2 and 3 below to a relevant body are references—
- (a) in relation to England and Wales, to any body with which the Audit Commission is concerned, other than one falling within subsection (8) below; and
  - (b) in relation to Scotland, to any local authority, joint board or joint committee, within the meaning of the 1973 Act.
- (8) Subject to section 4 below, the bodies with which the Audit Commission is concerned which shall not be relevant bodies for the purposes of this section and sections 2 to 3 below are—
- (a) parish and community councils and any parish meeting of a parish not having a separate parish council;
  - (b) charter trustees constituted under section 246 of the 1972 Act;
  - (c) health service bodies within the meaning of Part III of the 1982 Act;
  - (d) port health authorities;
  - (e) licensing planning committees;
  - (f) internal drainage boards;
  - (g) probation committees; and
  - (h) Passenger Transport Executives.

## 2 Directions under s. 1

- (1) A direction under section 1 above requiring the publication of information shall—
- (a) identify the financial year or years in relation to which the information is to be published;

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- (b) specify or describe the activities to which the information is to relate; and
  - (c) make provision as to the matters to be contained in the information and as to the form in which it is to be published.
- (2) A direction under section 1 above—
- (a) may be given so as to apply either to all the relevant bodies with which the Commission giving the direction is concerned or to all such bodies as are of a description specified in the direction; and
  - (b) may be varied or revoked by any subsequent direction under that section.
- (3) Before giving a direction under section 1 above which imposes a new requirement on any relevant body as to the publication of any information the Audit Commission or Scottish Accounts Commission shall consult such associations of relevant bodies and such other persons as it thinks fit.
- (4) A direction under section 1 above imposing a new requirement on any relevant body as to the publication of any information shall not be given any later than the 31st December in the financial year which precedes that in relation to which the information is to be published.
- (5) Where the Audit Commission or the Scottish Accounts Commission gives a direction under section 1 above, it shall—
- (a) publish the direction in such manner as it considers appropriate for bringing it to the attention of members of the public; and
  - (b) send a copy of the direction to every relevant body on whom duties are imposed by virtue of the direction.
- (6) References in this section to the imposition of a new requirement on a relevant body as to the publication of information are references to—
- (a) the imposition of any requirement by the first direction under section 1 above to apply to that body; or
  - (b) any subsequent extension of, or addition to, either—
    - (i) the matters to be contained in the information which that body are required to publish in relation to any financial year in pursuance of directions under section 1 above; or
    - (ii) the activities to which any such information is to relate.

### **3 Functions of auditor and studies by the Commissions**

- (1) In section 15(1) of the 1982 Act (duties of auditors), at the end of paragraph (c) there shall be inserted “and
- (d) in a case where that body are required to publish information in pursuance of a direction under section 1 of the Local Government Act 1992 (publication of performance information), that that body have made such arrangements for collecting and recording the information, and for publishing it, as are required for the performance of their duties under that section.”
- (2) In section 99 of the 1973 Act (which makes corresponding provision for Scotland), at the end of paragraph (c) there shall be inserted “and
- (d) in a case where that body are required to publish information in pursuance of a direction under section 1 of the Local Government Act 1992 (publication of performance information), that body have made

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such arrangements for collecting and recording the information, and for publishing it, as are required for the performance of their duties under that section.”

(3) The comparative and other studies which the Audit Commission is required to undertake or promote under section 26(1) of the 1982 Act, and those which the Scottish Accounts Commission is required to undertake or promote under section 97A(1) of the 1973 Act, shall include, in particular—

- (a) studies designed to enable the Audit Commission or, as the case may be, the Scottish Accounts Commission to determine what directions it should give under section 1 above; and
- (b) studies of information published in pursuance of directions under section 1 above which are designed to enable the Commission in question to determine, in relation to each financial year, what comparative information to publish itself about the standards of performance achieved by relevant bodies;

but neither Commission shall be required by section 26(4) of the 1982 Act or section 97A(3) of the 1973 Act to consult any person before undertaking or promoting a study falling within paragraph (a) or (b) above.

#### **4 Application to parish and community councils and charter trustees**

(1) The Secretary of State may by order provide for sections 1 to 3 above to have effect as if—

- (a) parish and community councils in England and Wales; and
- (b) charter trustees constituted under section 246 of the 1972 Act,

were relevant bodies for the purposes of those sections.

(2) The power to make an order under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

(3) The power to make an order under this section shall include power—

- (a) to make such incidental, consequential, transitional or supplementary provision as the Secretary of State thinks necessary or expedient; and
- (b) to make different provision for different cases, including different provision for different localities and for different bodies.

#### *Auditors' reports and recommendations*

#### **5 Duty to consider auditor’s report or recommendation**

(1) Where, at any time after the coming into force of this section, a body to which this section applies or, in the case of a parish meeting, their chairman is sent, in connection with the audit of that body’s accounts—

- (a) a report under section 15(3) of the 1982 Act (an auditor’s report) or, in Scotland, a copy of a report from the Controller of Audit under section 102(1) or (2) of the 1973 Act; or
- (b) such a written recommendation to that body by an auditor as is stated, in the document containing the recommendation, to be one which, in the auditor’s opinion, should be considered under this section or, in Scotland, a

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recommendation to that body from the Scottish Accounts Commission under section 103(1) of the 1973 Act,

it shall be the duty of the body concerned to consider the report or recommendation in accordance with the following provisions of this section and section 6 below.

- (2) The duty under this section of any body to consider a report or recommendation is a duty-
  - (a) to consider it at a meeting held before the end of the period of four months beginning with the day on which the report or recommendation was sent to that body or, as the case may be, to their chairman; and
  - (b) to decide at that meeting—
    - (i) whether the report requires that body to take any action or whether the recommendation is to be accepted; and
    - (ii) what, if any, action to take in response to the report or recommendation.
- (3) If—
  - (a) an auditor is satisfied, in the case of any body in England and Wales to which, or to whose chairman, any report or recommendation has been sent, that it is reasonable to allow more time for the body to comply with their duties under subsection (2) above in relation to that report or recommendation;
  - (b) the Controller of Audit is so satisfied in the case of any body to which a copy of a report under section 102(1) or (2) of the 1973 Act has been sent; or
  - (c) the Scottish Accounts Commission is so satisfied in the case of any body to which a recommendation under section 103(1) of the 1973 Act has been sent,the auditor, Controller of Audit or, as the case may be, Scottish Accounts Commission may, in relation to that report or recommendation, extend the period of four months mentioned in subsection (2)(a) above or (where it has already been extended under this subsection on one or more previous occasions) further extend it.
- (4) Nothing in section 101 of the 1972 Act (delegation of functions) shall apply to any duty imposed by this section on a body to which this section applies; and the duty imposed by this section on any body in Scotland shall be discharged only by that body.
- (5) In subsection (3) of section 18 of the 1982 Act (which imposes an obligation to take an auditor’s report into consideration as soon as practicable after it is received), for the words from “as soon as” to the end of the subsection there shall be substituted the words “in accordance with sections 5 and 6 of the Local Government Act 1992, or in the case of a body to which that section 5 does not apply, as soon as practicable after they receive the report.”
- (6) This section applies—
  - (a) to every body with which the Audit Commission is concerned, other than one falling within any of paragraphs (b) to (h) of section 1(8) above; and
  - (b) to every local authority, joint board or joint committee, within the meaning of the 1973 Act.
- (7) This section shall be without prejudice to any duties (so far as they relate to the subject-matter of a report or recommendation sent to a body to which this section applies) which are imposed by or under Part III of the 1982 Act or Part VII of the 1973 Act (accounts and audit in England and Wales and in Scotland), sections 114 to 116 of the Local Government Finance Act 1988 (functions and reports of finance officers),

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section 5 of the Local Government and Housing Act 1989 (functions of monitoring officers) or any other enactment.

## **6 Publicity requirements for meetings under s. 5**

- (1) A meeting shall not be held for the purposes of section 5 above unless, at least seven clear days before the meeting, there has been published, in a newspaper circulating in the area of the body concerned, a notice which—
  - (a) states the time and place of the meeting;
  - (b) indicates that the meeting is to be held in order for consideration to be given to a report by an auditor or the Controller of Audit or, as the case may be, to a recommendation of an auditor or of the Scottish Accounts Commission; and
  - (c) describes the subject-matter of that report or recommendation.
- (2) It shall be the duty of a body who have held a meeting for the purposes of section 5 above to ensure—
  - (a) that the relevant authority is notified, as soon as practicable after the end of the meeting, of the decisions made at that meeting in pursuance of subsection (2) (b) of that section; and
  - (b) that a notice containing such a summary of those decisions as has been approved by the relevant authority is published, as soon as practicable after the end of the meeting, in a newspaper circulating in that body’s area.
- (3) A notice published for the purposes of subsection (2)(b) above in relation to any meeting—
  - (a) shall not be required to summarise any decision made while the public were excluded from the meeting—
    - (i) under section 100A(2) of the 1972 Act or section 50A(2) of the 1973 Act (confidential matters);
    - (ii) in pursuance of a resolution under section 100A(4) of the 1972 Act or section 50A(4) of the 1973 Act (exempt information); or
    - (iii) in pursuance of a resolution under section 1(2) of the Public Bodies (Admission to Meetings) Act 1960 (protection of public interest);
 but
    - (b) in a case where sections 100C and 100D of the 1972 Act or sections 50C and 50D of the 1973 Act (availability for inspection after meetings of minutes, background papers and other documents) apply in relation to the meeting, shall indicate the documents in relation to that meeting which are open for inspection in accordance with those sections.
- (4) In subsection (2) above “the relevant authority”—
  - (a) in relation to a meeting of any body with which the Audit Commission is concerned, means the auditor of that body’s accounts;
  - (b) in relation to a meeting for the consideration of a report of the Controller of Audit, means the Controller of Audit; and
  - (c) in relation to a meeting for the consideration of a recommendation from the Scottish Accounts Commission, means that Commission.
- (5) This section, so far as it has effect in relation to a meeting under section 5 above, shall so have effect without prejudice to, and in addition to, any provision made in relation to meetings of the body in question by section 18(5) of the 1982 Act (information in

advance of meetings to consider auditor’s report) or by or under the 1972 Act, the 1973 Act, the Public Bodies (Admission to Meetings) Act 1960 or any other enactment.

*Publication of information by the Audit Commission*

**7 Publication of information by the Audit Commission**

- (1) Subject to the following provisions of this section, the Audit Commission shall have power to publish such information as it thinks fit with respect to any of the matters mentioned in subsection (2) below.
- (2) The matters referred to in subsection (1) above are—
  - (a) a contravention by a body with which that Commission is concerned of any obligation imposed on that body by virtue of subsection (2) of section 1 above;
  - (b) the making by an auditor of a report under section 15(3) of the 1982 Act to any such body, the subject-matter of any such report and the decision made and other action taken by any such body in response to the receipt of any such report or to anything contained in it;
  - (c) a contravention by any such body of any regulations made under section 23 of the 1982 Act (regulations with respect to accounts).
- (3) The information that may be published by virtue of subsection (2)(b) above shall not include—
  - (a) information with respect to a report made to a health service body, within the meaning of Part III of the 1982 Act, or to any decision or other action by such a body; or
  - (b) information excluded under subsection (3)(a) of section 6 above from any notice published for the purposes of subsection (2)(b) of that section.
- (4) The information that may be published under this section shall include information with respect to a contravention which occurred, to a report which was made and to any decision or action which was made or taken before the coming into force of this section.
- (5) Before publishing any information under this section relating to—
  - (a) the conduct or decisions of any body with which it is concerned; or
  - (b) a report made to any such body,the Audit Commission shall notify that body of its proposal to publish the information.
- (6) Information published under this section shall be published in such manner as the Audit Commission considers appropriate for bringing the information to the attention of those members of the public who may be interested.

*Competition*

**8 Application of competitive tendering to professional services etc**

- (1) The Secretary of State may by order make such provision in relation to proposals for the carrying out of work to which this section applies as he considers appropriate for facilitating or requiring separate procedures to be followed for—

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- (a) the evaluation for the purposes of Part I of the 1988 Act of the quality of the services which persons willing to carry out the work are able to provide and of their fitness to provide them; and
  - (b) the evaluation for those purposes of the financial terms on which such persons would carry out the work.
- (2) This section applies to any work which—
- (a) by virtue of an order under section 2(3) of the 1988 Act, falls within a defined activity for the purposes of Part I of that Act; and
  - (b) consists in, or involves, the provision of professional advice or of other professional services or the application of any financial or technical expertise.
- (3) Before making an order under this section the Secretary of State shall consult such representatives of local government as appear to him to be appropriate.
- (4) The power to make an order under this section shall be exercisable by statutory instrument; and no such order shall be made unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament.
- (5) The power to make an order under this section shall include power—
- (a) to make such incidental, consequential, transitional or supplementary provision as the Secretary of State thinks necessary or expedient; and
  - (b) to make different provision for different cases, including different provision for different localities and for different authorities;
- and the power conferred by virtue of paragraph (a) above shall include power, for the purposes of, or in connection with, any separate procedures for which an order under this section provides, to modify any of the provisions of Part I of the 1988 Act.
- (6) The powers conferred by this section shall be without prejudice to the power conferred by section 15(8)(a) of the 1988 Act (power to make incidental modifications in connection with an order extending the defined activities).

## **9 Power to define conduct as competitive or anti-competitive**

- (1) The Secretary of State may by regulations make provision, for the purposes of one or more of the conditions mentioned in subsection (2) below, for conduct described in the regulations to be regarded, in accordance with the regulations and in such circumstances as may be so described—
- (a) as conduct which has the effect of restricting, preventing or distorting competition or is likely to have that effect; or
  - (b) as conduct which does not have that effect and is not likely to have that effect.
- (2) The conditions referred to in subsection (1) above are—
- (a) the condition specified in section 7(1A) of the 1980 Act (competition condition in the case of certain works contracts);
  - (b) the condition specified in section 9(4)(aaaa) of the 1980 Act (competition condition applying in the case of prescribed construction or maintenance work);
  - (c) the condition set out in section 4(5) of the 1988 Act (competition condition in the case of works contracts relating to work falling within a defined activity);
  - (d) the condition set out in section 7(7) of the 1988 Act (competition condition in the case of functional work falling within such an activity).



- (3) Without prejudice to the generality of subsection (1) above or to any power conferred by section 8 of the 1988 Act (regulations with respect to fulfilment of conditions), regulations under this section may—
- (a) prescribe the matters which are to be taken into account, or disregarded, in the course of any evaluation made for the purpose of deciding who should undertake or carry out particular work;
  - (b) prescribe the manner in which, or extent to which, any matter described in the regulations is to be so taken into account or disregarded;
  - (c) prescribe maximum and minimum periods for the periods which are required, by virtue of paragraphs (b) and (d) of subsection (2) of section 7 of the 1988 Act, to be specified in a notice published for the purposes of subsection (1) of that section (periods for inspection of specification and for notifying an authority of a wish to tender);
  - (d) prescribe a maximum and a minimum period for the period which is to elapse, in a case where a notice has been so published, between—
    - (i) the announcement of the decision as to who should carry out the work in question; and
    - (ii) the beginning of the period during which the work is to be carried out;
  - (e) make provision for the issue by the Secretary of State of guidance as to how conduct restricting, distorting or preventing competition is to be avoided in the doing of anything under or for the purposes of Part III of the 1980 Act or Part I of the 1988 Act; and
  - (f) require the extent (if any) to which there has been a contravention of guidance issued by the Secretary of State under the regulations to be taken into account in any determination of whether or not a condition mentioned in subsection (2) above has been fulfilled.
- (4) The power to make regulations under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament; and that power shall include power—
- (a) to make such incidental, consequential, transitional or supplementary provision as the Secretary of State thinks necessary or expedient; and
  - (b) to make different provision for different cases, including different provision for different localities and for different bodies.

## **10 Publicity for tender specifications**

- (1) This section applies where a relevant authority make a decision in consequence of which any work is required to be carried out (whether by the authority themselves or by some other person) in accordance with a specification which has been either—
- (a) prepared for the purposes of an invitation issued for the purposes of section 9(4)(a) of the 1980 Act (competitive tendering for construction and maintenance work); or
  - (b) made available for inspection in accordance with a notice published for the purposes of section 7(1) of the 1988 Act (competitive tendering for other functional work).
- (2) Where this section applies, it shall be the duty of the authority making the decision—
- (a) to make arrangements for—
    - (i) a copy of the specification; and

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- (ii) a document containing a summary of the main requirements of the specification,  
to be kept available, throughout the period during which the work in question is to be carried out, for inspection by members of the public, at all reasonable hours, at the principal office of the authority; and
  - (b) to give such publicity to those arrangements as they think sufficient for drawing the attention of members of the public who may be interested to the fact that the specification and that document are so available.
- (3) In this section “relevant authority” means any body which is a local authority or development body within the meaning of Part III of the 1980 Act or a defined authority within the meaning of Part I of the 1988 Act.

## **11 Amendments of competition provisions**

Part III of the 1980 Act and Part I of the 1988 Act (competition provisions) shall have effect with the amendments specified in Schedule 1 to this Act.