



# Local Government Act 1988

## 1988 CHAPTER 9

### [<sup>F1</sup>PART I]

#### COMPETITION

##### Textual Amendments

- F1** Pt. I repealed (E.W.) (27.7.1999 with effect in accordance with ss. 21, 27 of the amending Act) by 1999 c. 27, ss. 21(1)(b), 34, **Sch. 2(1)**, Note

##### Modifications etc. (not altering text)

- C1** Pt. I (ss. 1–16): power to modify conferred by **Environmental Protection Act 1990** (c. 43, SIF 46:4), s. **97(1)(b)**
- C2** Pt. I (ss. 1–16): power to modify conferred (*prosp.*) by **Local Government Act 1992** (c. 19), ss. **8(5)**, 30(3)
- C3** Pt. I (ss. 1–16): applied (with modifications) (*temp.* from 31.3.1995 to 31.12.2000) by **S.I. 1995/678**, art. 3, **Sch. 1**
- C4** Pt. I (ss. 1–16): power to apply conferred (1.9.1997) by **1997 c. 50**, s. 44(1), **Sch. 4** para. (h)(i); **S.I. 1997/1930**, art. 3

#### *Preliminary*

##### [<sup>F2</sup>1 **Defined authorities.**

- (1) For the purposes of this Part each of the following is a defined authority—
- (a) a local authority,

[ a National Park authority.]

- <sup>F3</sup>(aa)
  - (b) an urban development corporation established by an order under section 135 of the <sup>M1</sup>Local Government, Planning and Land Act 1980,
  - (c) a development corporation established for the purposes of a new town,
  - (d) the Commission for the New Towns,

*Status: Point in time view as at 08/05/2000.*

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- [ a police authority established under <sup>F5</sup>section 3 of the Police Act 1996,]
- <sup>F4</sup>(e)
- (f) a fire authority constituted by a combination scheme and a metropolitan county fire and civil defence authority,
- (g) the London Fire and Civil Defence Authority,
- (h) a metropolitan county passenger transport authority, <sup>F6</sup>and]
- (i) an authority established by an order under section 10(1) of the Local Government Act 1985 (waste disposal),
- <sup>F7</sup>(j) .....
- <sup>F8</sup>(k) .....
- <sup>F9</sup>(l) .....

- (2) In the application of this Part to England <sup>F10</sup>. . . , “local authority” in subsection (1) above means—
  - (a) a county council, a district council, a London borough council, a parish council, <sup>F10</sup>. . . or the Council of the Isles of Scilly;
  - (b) the Common Council of the City of London in its capacity as local authority or police authority.

[ In the application of this Part to Wales, “local authority” in subsection (1) above means <sup>F11</sup>(2A) a county council, a county borough council or a community council.]

- (3) In the application of this Part to Scotland, in subsection (1) above—
  - (a) “local authority” means a <sup>F12</sup>council constituted under section 2 of the Local Government etc. (Scotland) Act 1994]or any joint board or joint committee within the meaning of the <sup>M2</sup>Local Government (Scotland) Act 1973, <sup>F13</sup>. . .
  - <sup>F13</sup>(b) .....
- (4) In a case where two or more defined authorities arrange under section 101 of the <sup>M3</sup>Local Government Act 1972 for the discharge by a joint committee of theirs of any of their functions, the committee shall itself be treated as a defined authority for the purposes of this Part in its application to England and Wales.]

Textual Amendments	
<b>F2</b>	S. 1 repealed (E.W.) (27.7.1999 with effect in accordance with ss. 21, 27 of the amending Act) by 1999 c. 27, ss. 21(1)(b), 34, <b>Sch. 2(1)</b> , Note
<b>F3</b>	S. 1(1)(aa) inserted (E.W.) (19.9.1995) by 1995 c. 25, ss. 65(7), 125(2), <b>Sch. 8 para. 8(2)</b> (with ss. 7(6), 115, 117)
<b>F4</b>	S. 1(1)(e) substituted (1.10.1994 for certain purposes and otherwise 1.4.1995) by 1994 c. 29, s. 43, <b>Sch. 4 Pt. I para. 31</b> ; S.I. 1994/2025, <b>art. 6(1)(3)-(6)</b> ; S.I. 1994/3262, art. 4, <b>Sch.</b>
<b>F5</b>	Words in s. 1(1)(e) substituted (22.8.1996) by 1996 c. 16, ss. 103, 104(1), <b>Sch. 7 Pt. I para. 1(2)(za)</b>
<b>F6</b>	Word inserted (S.) (1.4.1996) by 1994 c. 39, s. 180(1)(2), <b>Sch. 13 para. 156(2)(a)(i)</b> ; S.I. 1996/323, <b>art. 4(1)(c)</b>
<b>F7</b>	S. 1(1)(j) repealed (1.4.1994) by 1993 c. 35, ss. 303, 307(1)(3), Sch. 19 para. 110, <b>Sch. 21 Pt. II</b> ; S.I. 1994/507, art. 4, <b>Sch. 2</b> , Appendix
<b>F8</b>	S. 1(1)(k) repealed (S.) (1.4.1996) by 1994 c. 39, s. 180(1)(2), Sch. 13 para. 156(2)(a)(ii), <b>Sch. 14</b> ; S.I. 1996/323, art. 4(1)(c), <b>Sch. 2</b>
<b>F9</b>	S. 1(1)(l) and word immediately preceding it repealed by Housing (Scotland) Act 1988 (c.43, SIF 61), ss. 1, 3(1)(3), 72(3), <b>Sch. 2 para. 16(b)</b> , <b>Sch. 10</b>
<b>F10</b>	Words in s. 1(2) omitted (17.2.1995) by virtue of S.I. 1995/115, <b>art. 3</b>
<b>F11</b>	S. 1(2A) inserted (17.2.1995) by S.I. 1995/115, <b>art. 3</b>

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**F12** S. 1(3)(a): words in definition of “local authority” substituted (S.) (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 156(2)(b)**; S.I. 1996/323, **art. 4(1)(c)**

**F13** S. 1(3)(b) and word immediately preceding it repealed (S.) (1.4.1996) by 1994 c. 39, s. 180(2), **Sch. 14**; S.I. 1996/323, **art. 4(1)(c)**, **Sch. 2**

**Modifications etc. (not altering text)**

**C5** S. 1(2A) modified (17.2.1995 to 1.4.1996) by S.I. 1995/115, **art. 4**

**Marginal Citations**

**M1** 1980 c. 65.

**M2** 1973 c. 65.

**M3** 1972 c. 70.

[<sup>F142</sup> **Defined activities.**

(1) This section applies for the purposes of this Part.

(2) Each of the following is a defined activity—

- (a) collection of refuse,
- (b) cleaning of buildings,
- (c) other cleaning,
- (d) catering for purposes of schools and welfare,
- (e) other catering,
- [ managing sports and leisure facilities;]

<sup>F15</sup>(ee)

(f) maintenance of ground, <sup>F16</sup> . . .

[ supervision of parking,

<sup>F17</sup>(ff)

<sup>F17</sup>(g) repair and maintenance of vehicles,

<sup>F17</sup>(gg) management of vehicles,]

[<sup>F18</sup>, and

(h) housing management]

[ security work,

<sup>F19</sup>(i)

<sup>F19</sup>(j) legal services;]

[ construction and property services;]

<sup>F20</sup>(k)

[ financial services;

<sup>F21</sup>(l)

(m) information technology services;

(n) personnel services.]

and Schedule 1 to this Act applies for the purpose of interpreting the preceding provisions of this subsection.

(3) The Secretary of State may by order provide for an activity to be a defined activity by adding a paragraph to those for the time being appearing in subsection (2) above [<sup>F22</sup> or by modifying any provision of Schedule 1 to this Act which for the time being excludes anything from the activities falling within any of those paragraphs.].

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- (4) Before making an order under subsection (3) above, the Secretary of State shall consult such representatives of local government as appear to him to be appropriate.
  - (5) Where work would (apart from this subsection) fall within more than one defined activity it shall be treated as falling only within such one of them as the authority carrying out the work decide.
  - (6) Work which is carried out by a defined authority through an employee and which would (apart from this subsection) fall within a defined activity shall not do so if it is incidental to the greater part of the work he is employed to do and the greater part does not constitute a defined activity.
  - (7) If a defined authority carry out work which (apart from this subsection) would not fall within a defined activity, and which in their opinion cannot be carried out efficiently separately from a particular defined activity, the work shall (if they so decide) be treated as falling within that defined activity.
  - (8) Work which would (apart from this subsection) fall within a defined activity shall not do so if it is calculated to avert, alleviate or eradicate the effects or potential effects of an emergency or disaster (actual or potential) involving or likely to involve danger to life or health or serious damage to or destruction of property.
  - (9) The Secretary of State may provide by order that any activity specified in the order, if carried out by a defined authority or authorities so specified, shall not be treated as a defined activity so long as conditions so specified are fulfilled.
- [ Without prejudice to his powers to make orders or regulations under any other
- <sup>F23</sup>(10) provision of this Part of this Act, the Secretary of State may by order provide that, from 31st March 1995 or such later date as may be specified in the order until such date as may be so specified, being a date not later than 31st December 2001, the provisions of this Part of this Act shall apply in relation to local authorities subject to such modifications as may be so specified.]]

#### Textual Amendments

- F14** S. 2 repealed (E.W.) (27.7.1999 with effect in accordance with ss. 21, 27 of the amending Act) by 1999 c. 27, ss. 21(1)(b), 34, **Sch. 2(1)**, Note
- F15** S. 2(2)(ee) inserted by S.I. 1989/2488, **art. 2(1)**
- F16** Word after s. 2(2)(f) omitted (23.6.1994) by virtue of S.I. 1994/1671, **art. 2(1)(a)**
- F17** S. 2(2)(ff)(g)(gg) substituted (10.11.1994) for s. 2(2)(g) by S.I. 1994/2884, **art. 2(1)(a)**
- F18** S. 2(2)(h) and word immediately preceding it inserted (23.6.1994) by S.I. 1994/1671, **art. 2(1)(b)**
- F19** S. 2(2)(i)(j) inserted (10.11.1994) by S.I. 1994/2884, **art. 2(1)(b)**
- F20** S. 2(2)(k) inserted (11.11.1994) by S.I. 1994/2888, **art. 2(1)**
- F21** S. 2(2)(l)(m)(n) inserted (20.7.1995) by S.I. 1995/1915, **art. 2**
- F22** Words in s. 2(3) inserted (13.6.1994) by Local Government Act 1992 (c. 19), s. 11, **Sch. 1 para. 10**; S.I. 1994/1445, **art. 2**
- F23** S. 2(10) inserted (S.) (4.1.1995) by 1994 c. 39, s. 180(1), **Sch. 13 para. 156(3)**; S.I. 1994/2850, **art. 3(c)**

#### Modifications etc. (not altering text)

- C6** S. 2 modified (10.11.1994) by S.I. 1994/2884, **art. 3(1)**
- C7** S. 2 modified (11.11.1994) by S.I. 1994/2888, **art. 3(1)**
- C8** S. 2 modified (20.7.1995) by S.I. 1995/1915, **art. 5(1)**
- C9** S. 2(2) modified (E.W.) by S.I. 1988/1372, **arts. 3–6**

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- C10 S. 2(2) modified (S.) by S.I. 1988/1415, **arts. 3–6**
- C11 S. 2(2) excluded (E.W.) by S.I. 1988/1469, **arts. 3, 4, 6**
- C12 S. 2(2) restricted (6.4.1992) by S.I. 1992/583, **art. 3**
- C13 S. 2(2) excluded (3.3.1997) by S.I. 1997/198, **arts. 3, 6, 7, 9**
- C14 S. 2(2) restricted (27.3.1997) by S.I. 1997/560, **art. 3**
- C15 S. 2(2)(b)(d) restricted by S.I. 1990/403, **art. 3**
- C16 S. 2(2)(b) restricted (1.10.1996) by S.I. 1995/2449, **art. 2(1)**
- C17 S. 2(2)(b) excluded (3.3.1997) by S.I. 1997/198, **art. 4**
- C18 S. 2(2)(c) excluded (15.3.1991) by S.I. 1991/262, **art. 3**
- C19 S. 2(2)(c) excluded (22.2.1991) by S.I. 1991/312, **art. 3**
- C20 S. 2(2)(h) excluded (3.3.1997) by S.I. 1997/198, **art. 5**
- C21 S. 2(2)(j)-(n) excluded (3.3.1997) by S.I. 1997/198, **art. 10**
- C22 S. 2(6) modified (23.6.1994) by S.I. 1994/1671, **art. 3**

### [<sup>F24</sup>3] **Other definitions.**

- (1) This section applies for the purposes of this Part.
- (2) “Works contract” means a contract constituting or including an agreement which provides for the carrying out of work by a defined authority.
- (3) But a contract is not a works contract if it constitutes or includes an agreement providing for a defined authority to discharge the functions of a Minister of the Crown, another defined authority or (in the application of this Part to England and Wales) a [<sup>F25</sup>sewerage undertaker].
- (4) “Functional work” means—
  - (a) work carried out by a defined authority, other than work carried out under a works contract; and
  - (b) work which is carried out otherwise than by a defined authority but which is dependent upon, or incidental or preparatory to, other work which, by virtue of paragraph (a) above, is functional work in relation to that authority;and work carried out as mentioned in paragraph (b) above shall be treated as carried out by the defined authority.
- (5) “Financial year” means a period of 12 months beginning with 1st April.]

#### **Textual Amendments**

- F24 S. 3 repealed (E.W.) (27.7.1999 with effect in accordance with ss. 21, 27 of the amending Act) by 1999 c. 27, ss. 21(1)(b), 34, **Sch. 2(1)**, Note
- F25 Words substituted by Water Act 1989 (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), Sch. 25 para. 79(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), **58**

#### **Modifications etc. (not altering text)**

- C23 S. 3(3) modified by S.I. 1988/1373, **reg. 3**
- C24 S. 3(4) applied (with modifications) (10.11.1994) by S.I. 1994/2884, **art. 3(2)**  
S. 3(4) applied (with modifications) (11.11.1994) by S.I. 1994/2888, **art. 3(2)**  
S. 3(4) applied (with modifications) (20.7.1995) by S.I. 1995/1915, **art. 5(2)**

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*Works contracts: restrictions*

[<sup>F26</sup>4] **Works contracts: restrictions.**

- (1) If a defined authority (a bidding authority) propose to enter into a works contract with another person (the other party) and under the contract the bidding authority are to carry out work falling within a defined activity, the bidding authority may not enter into the contract unless—
  - (a) the first or second alternative of the first condition is fulfilled, and
  - (b) the second condition is fulfilled.
- (2) The first alternative of the first condition is that—
  - (a) the contract is made by acceptance of the bidding authority's offer to carry out the work,
  - (b) the bidding authority made the offer in response to an invitation by the other party to submit such offers, and
  - (c) the invitation was made to at least three other persons who are willing to carry out work of the kind concerned, and who are not defined authorities or include at least three persons who are not defined authorities.
- (3) The Secretary of State may by regulations vary—
  - (a) the number of persons to whom an invitation must be made under subsection (2) (c) above; and
  - (b) the minimum number of those persons who are not to be defined authorities.
- (4) The second alternative of the first condition is that before entering into the contract the other party published, in at least one newspaper circulating in the locality in which the work is to be carried out and at least one publication circulating among persons who carry out work of the kind concerned, a notice inviting persons to submit offers to carry out the work.
- (5) The second condition is that the other party, in entering into the contract and in doing anything else (whether or not required by this Part) in connection with the contract before entering into it, did not act in a manner having the effect or intended or likely to have the effect of restricting, distorting or preventing competition.
- (6) Anything which (apart from this subsection) would amount to a failure to fulfil the first or second alternative of the first condition, or the second condition, shall not do so [<sup>F27</sup>unless the bidding authority have become aware of the failure before entering into the contract.].
- (7) This section applies where it is proposed to enter into the works contract on or after 1st April 1989.]

**Textual Amendments**

**F26** S. 4 repealed (E.W.) (27.7.1999 with effect in accordance with ss. 21, 27 of the amending Act) by S.I. 1999 c. 27, ss. 21(1)(b), 34, **Sch. 2(1)**, Note

**F27** Words in s. 4(6) substituted (14.2.1993) by **Local Government Act 1992 (c. 19)**, s. 11, **Sch. 1**, para. 11; S.I. 1992/3241, **art. 3**

**Modifications etc. (not altering text)**

**C25** S. 4 modified by S.I. 1989/2488, **art. 3**

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- C26** S 4 modified (23.6.1994) by [S.I. 1994/1671](#), [art. 4](#)  
S. 4 modified (10.11.1994) by [S.I. 1994/2884](#), [art. 4](#)  
S. 4 modified (11.11.1994) by [S.I. 1994/2888](#), [art. 4](#)  
S. 4 modified (20.7.1995) by 1995/1915, art. 6
- C27** S. 4(1) modified (E.W.) by [S.I. 1991/719](#), [reg. 6\(3\)\(a\)](#)

**[<sup>F28</sup>5 Works contracts: transitional.**

- (1) Where—
- (a) a defined authority (as a bidding authority) entered into a works contract before 1st April 1989 (and whether or not before the passing of this Act), and
  - (b) had they entered into the contract on 1st April 1989 they would have infringed section 4 above,
- on that date the parties to the contract shall cease to have power to carry it out.
- (2) If the contract is governed by English law and the parties to it do not make other provision before 1st April 1989, the <sup>M4</sup>Law Reform (Frustrated Contracts) Act 1943 shall apply to the contract with effect from that date.]

**Textual Amendments**

- F28** S. 5 repealed (E.W.) (27.7.1999 with effect in accordance with ss. 21, 27 of the amending Act) by 1999 c. 27, ss. 21(1)(b), 34, [Sch. 2\(1\)](#), Note

**Modifications etc. (not altering text)**

- C28** S. 5 modified by [S.I. 1989/2488](#), [art. 3](#)
- C29** S. 5 modified (20.7.1995) by [S.I. 1995/1915](#), [art. 6](#)  
S. 5 modified (23.6.1994) by [S.I. 1994/1671](#), [art. 4](#)  
S. 5 modified (10.11.1994) by 1994/2884, art. 4  
S. 5 modified (11.11.1994) by 1994/2888, art. 4

**Marginal Citations**

- M4** 1943 c. 40.

*Functional work: restrictions*

**[<sup>F29</sup>6 Functional work: restrictions.**

- (1) A defined authority may not carry out functional work falling within a defined activity unless each of the six conditions is fulfilled.
- (2) The conditions mentioned in subsection (1) above are those set out in section 7 below, which shall have effect subject to section 8 below.
- (3) This section applies only if the work falls within such a defined activity, is of such a description, is proposed to be carried out by such defined authority or authorities, and is proposed to be carried out on or after such date (not preceding 1st April 1989), as the Secretary of State may by regulations specify [<sup>F30</sup> and regulations under this section may describe work by reference to a specified proportion of work of a particular description.].



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- (4) The regulations may provide that where a defined authority propose to carry out functional work which falls within a defined activity specified in the regulations (whether or not by virtue of section 2(5) or (7) above) and to which this section would not otherwise apply, it shall (if the authority so decide) be treated as work to which this section applies.
- (5) This section applies even if the work forms part of work begun before any date specified in the regulations, but references in this section and the following provisions of this Part to the work do not include references to any work carried out before such date.]

#### Textual Amendments

- F29** S. 6 repealed (E.W.) (27.7.1999 with effect in accordance with ss. 21, 27 of the amending Act) by 1999 c. 27, ss. 21(1)(b), 34, **Sch. 2(1)**, Note
- F30** Words in s. 6(3) inserted (6.1.1994) by Local Government Act 1992 (c. 19), s. 11, **Sch. 1**, para. 12; S.I. 1993/3169, **art. 2**

#### Modifications etc. (not altering text)

- C30** S. 6 applied (E.W.) by S.I. 1988/1371, **reg. 6**  
S. 6 applied (S.) by S.I. 1990/1484, **reg. 3(1)(3)**
- C31** S. 6 applied by S.I. 1990/1564, **reg. 2(1)**  
S. 6 applied (31.1.1992) by S.I. 1992/9, **reg. 2(2)**
- C32** S. 6 applied (13.3.1991) by S.I. 1991/232, **arts 3(1)(2), 4(1)**  
S. 6 applied (S.) (3.3.1997 with effect as mentioned in regs. 3, 4, 6, 8, Sch. 6 of the amending S.I.) by S.I. 1997/197, **regs. 3, 4, 6, 8, Sch. 6**
- C33** S. 6 excluded (temp) (1.4.1991) by S.I. 1991/719, **regs. 4(3)(7)(10)**  
S. 6 excluded (temp) (E.W) (1.4.1991) by S.I. 1991/719, **reg. 5(2)(4)**
- C34** S. 6 extended (1.4.1991) by S.I. 1991/719, **reg. 4(4)(10)**
- C35** S. 6 extended (E.W) (1.4.1991) by S.I. 1991/719, **reg. 5(5)**
- C36** S. 6 excluded (E.W.) by 1985 c. 68, s. 27AA(3) (as inserted (E.W.) (11.10.1993) by 1993 c. 28, s. 131; S.I. 1993/2134, **arts. 2, 4(a)**
- C37** S. 6 applied (4.10.1994 with effect as mentioned in reg. 3 of the amending S.I.) by S.I. 1994/2297, **reg. 3**  
S. 6 applied (9.1.1995 with effect as mentioned in reg. 3(a)-(d) of the amending S.I.) by S.I. 1994/3164, **reg. 3(a)-(d)**  
S. 6 excluded (9.1.1995 with effect as mentioned in reg. 3(d)(i)-(iii) of the amending S.I.) by S.I. 1994/3164, **reg. 3(d)(i)-(iii)**  
S. 6 applied (9.1.1995 with effect as mentioned in reg. 2(1)(a)-(d) of the amending S.I.) by S.I. 1994/3165, **reg. 2(1)(a)-(d)**  
S. 6 excluded (9.1.1995 with effect as mentioned in reg. 2(1)(d)(i)-(iii) of the amending S.I.) by S.I. 1994/3165, **reg. 2(1)(d)(i)-(iii)**  
S. 6 applied (9.1.1995 with effect as mentioned in reg. 3(a)-(d) of the amending S.I.) by S.I. 1994/3166, **reg. 3(a)-(d)**  
S. 6 excluded (9.1.1995 with effect as mentioned in reg. 3(d)(i)-(iii) of the amending S.I.) by S.I. 1994/3166, **reg. 3(d)(i)-(iii)**  
S. 6 excluded (9.1.1995) by S.I. 1994/3167, **reg. 14(3)**  
S. 6 applied (17.8.1995) by S.I. 1995/1973, **reg. 4**  
S. 6 applied (7.9.1995) by S.I. 1995/2100, **reg. 3**  
S. 6 applied (7.9.1995 with effect as mentioned in reg. 3(1)(a)-(e) of the amending S.I.) by S.I. 1995/2101, **reg. 3(1)(a)-(e)**



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- S. 6 excluded (7.9.1995 with effect as mentioned in reg. 3(1)(e)-(i)(ii) of the amending S.I.) by S.I. 1995/2101, **reg. 3(1)(e)(i)(ii)**
- S. 6 applied (29.11.1995 with effect as mentioned in reg. 3(1)(a)-(e) of the amending S.I.) by S.I. 1995/2813, **reg. 3(1)(a)-(e)**
- S. 6 excluded (29.11.1995 with effect as mentioned in reg. 3(1)(e)(i)-(ii) of the amending S.I.) by S.I. 1995/2813, **reg. 3(1)(e)(i)-(ii)**
- S. 6 applied (5.12.1995 with effect as mentioned in reg. 3(1)(a)-(e) of the amending S.I.) by S.I. 1995/2916, **reg. 3(1)(a)-(e)**
- S. 6 excluded (5.12.1995 with effect as mentioned in reg. 3(1)(e)(i)-(ii) of the amending S.I.) by S.I. 1995/2916, **reg. 3(1)(e)(i)-(ii)**
- S. 6 applied (with modifications) (26.1.1996 with effect as mentioned in reg. 2 of the amending S.I.) by S.I. 1995/3302, **reg. 2**
- S. 6 excluded (1.10.1996) by 1985 c. 68, s. 27(5A) (as inserted (1.10.1996) by 1996 c. 52, s. 222, **Sch. 18 Pt. I para. 3(4)**; S.I. 1996/2402, **art. 3**)
- S. 6 applied (W.) (21.2.1997 with effect as mentioned in reg. 3 of the amending S.I.) by S.I. 1997/125, **reg. 3**
- S. 6 applied (W.) (21.2.1997 with effect as mentioned in reg. 3 of the amending S.I.) by S.I. 1997/126, **reg. 3**
- S. 6 applied (W.) (21.2.1997 with effect as mentioned in reg. 3 of the amending S.I.) by S.I. 1997/127, **reg. 3**
- S. 6 applied (W.) (21.2.1997 with effect as mentioned in reg. 2 of the amending S.I.) by S.I. 1997/128, **reg. 2**
- S. 6 applied (W.) (21.2.1997 with effect as mentioned in reg. 3 of the amending S.I.) by S.I. 1997/130, **reg. 3**
- S. 6 applied (W.) (18.4.1997 with effect as mentioned in reg. 3(a)-(c) of the amending S.I.) by S.I. 1997/935, **reg. 3(1)(2), Sch. Pts. I-III**
- C38** s. 6(1) applied (16.5.1992) by Further and Higher Education (Scotland) Act 1992 (c. 37), s. 62, **Sch. 8, Pt. I, para. 1(3)**; S.I. 1992/817, **art. 3(2), Sch. 1**

### <sup>F317</sup> **The conditions.**

- (1) The first condition is that, before carrying out the work, the authority published, in at least one newspaper circulating in the locality in which the work is to be carried out and at least one publication circulating among persons who carry out work of the kind concerned, a notice containing the matters mentioned in subsection (2) below.
- (2) The matters are—
  - (a) a brief description of the work,
  - (b) a statement that during a period specified in the notice any person may inspect a detailed specification of the work free of charge at a place and time specified in the notice,
  - (c) a statement that during that period any person will be supplied with a copy of the detailed specification on request and on payment of such charge as is specified in the notice,
  - (d) a statement that any person who may wish to carry out the work should notify the authority of that fact within a period specified in the notice, and
  - (e) a statement that the authority intend to make, in accordance with the third condition, an invitation to carry out the work.
- (3) The second condition is that—
  - (a) the periods, place, time and charge specified in the notice are reasonable,

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- (b) before carrying out the work, the authority made a detailed specification of the work available for inspection, and copies of it available for supply, in accordance with the notice, and
  - (c) the detailed specification includes a statement of the period during which the work is to be carried out.
- (4) The third condition is that, if any person notified the authority in accordance with the statement under subsection (2)(d) above, the authority made an invitation to carry out the work in accordance with the following rules—
- (a) the invitation was made by the authority before carrying out the work, and not less than 3 nor more than 6 months after complying with the first condition;
  - (b) if more than three persons who are not defined authorities notified the authority, at least three of them were invited;
  - (c) if less than four persons who are not defined authorities notified the authority, each of them was invited;
  - (d) if a defined authority or defined authorities notified the authority, such one or more (if any) of them as the authority decided was invited.
- (5) The Secretary of State may by regulations amend paragraphs (b) and (c) of subsection (4) above so as to vary the number of persons who are not defined authorities who must be invited to carry out work in particular circumstances.
- (6) The fourth condition is that before carrying out the work the authority, through their direct labour organisation or a similar organisation, prepared a written bid indicating their wish to carry out the work.
- (7) The fifth condition is that the authority, in reaching the decision that they should carry out the work and in doing anything else (whether or not required by this Part) in connection with the work before reaching the decision, did not act in a manner having the effect or intended or likely to have the effect of restricting, distorting or preventing competition.
- (8) The sixth condition is that in carrying out the work the authority comply with the detailed specification of it mentioned in subsections (2) and (3) above.]

#### Textual Amendments

**F31** S. 7 repealed (E.W.) (27.7.1999 with effect in accordance with ss. 21, 27 of the amending Act) by 1999 c. 27, ss. 21(1)(b), 34, **Sch. 2(1)**, Note

#### Modifications etc. (not altering text)

**C39** S. 7 restricted (W.) (1.4.1996) by **S.I. 1996/265, reg. 3**

**C40** S. 7(2)(b)(d): power to modify conferred (4.1.1993) by **Local Government Act 1992 (c. 19), s. 9(3)(c); S.I. 1992/3241, art. 2**

**C41** S. 7(3) restricted (17.8.1995) by **S.I. 1995/1973, reg. 5**

**C42** S. 7(4) modified (11.11.1994) by **S.I. 1994/2888, art. 3(3)**

S. 7(4) modified (20.7.1995) by **S.I. 1995/1915, art. 5(3)**

**C43** S. 7(4)(a) modified (10.11.1994) by **S.I. 1994/2884, art. 3(3)**

**C44** S. 7(8) applied (9.1.1995) by **S.I. 1994/3167, reg. 14(5)(a)**

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**[<sup>F328</sup> The conditions: further provisions.**

- (1) If the Secretary of State so provides by regulations, the second condition shall not be treated as fulfilled if the period stated by virtue of section 7(3)(c) above—
  - (a) exceeds a period specified in the regulations;
  - (b) is less than another period so specified.
- (2) If the Secretary of State so provides by regulations, the third condition shall not be treated as fulfilled unless—
  - (a) the contents of any invitation included prescribed matters (which may relate to the time allowed for responding, the method of responding, or otherwise), and
  - (b) if any response was made to any invitation, before carrying out the work the authority complied with prescribed requirements as to responses (which may include requirements to disregard certain responses, requirements about the keeping or opening of responses, or otherwise);and “prescribed” here means prescribed by the regulations.
- (3) The fourth condition shall not be treated as fulfilled unless the bid is prepared in accordance with the following rules—
  - (a) if the authority would, assuming it were an independent contractor, charge for carrying out the work, the bid must provide for an item to be credited to any account kept (or to be kept) by the authority as regards the work under section 9 below,
  - (b) if the authority would, assuming it were an independent contractor, pay for the right to carry out the work, the bid must provide for an item to be debited to any such account,
  - (c) in the case of an item to be credited, the bid must state either what the authority intend as its maximum amount or the method by which they intend to calculate its maximum amount,
  - (d) in the case of an item to be debited, the bid must state either what they intend as its minimum amount or the method by which they intend to calculate its minimum amount, and
  - (e) a statement mentioned in paragraph (c) or (d) above may include provision for any intended amount or method to vary with changes in circumstances.
- (4) If the Secretary of State so provides by regulations, the fourth condition shall not be treated as fulfilled unless before carrying out the work the authority complied with requirements prescribed by the regulations as to the bid (which may include requirements about the preparation, keeping or opening of the bid, or otherwise).
- (5) If the Secretary of State so provides by regulations, the fifth condition shall not be treated as fulfilled unless—
  - (a) in accordance with prescribed requirements there is prepared and certified a document which appraises and fulfils such other conditions as may be prescribed with respect to responses falling within subsection (2) above and the bid referred to in subsection (3) above; and
  - (b) at such time or times (prior to reaching the decision referred to in section 7(7) above) as may be prescribed, copies of that document are provided or made available in accordance with any prescribed requirements;and “prescribed” here means prescribed by the regulations.

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- (6) Where any document is provided or made available in accordance with the requirements of regulations under subsection (5) above, the publication thereby of any defamatory matter in the document shall be privileged unless the publication is proved to be made with malice.]

#### Subordinate Legislation Made

- P1** S. 8: for exercises of this power see Index to Government Orders.  
**P2** S. 6(3) (with ss. 8(1) and 15(6)) power exercised by [S.I. 1991/232](#).

#### Textual Amendments

- F32** S. 8 repealed (E.W.) (27.7.1999 with effect in accordance with ss. 21, 27 of the amending Act) by [1999 c. 27, ss. 21\(1\)\(b\), 34, Sch. 2\(1\)](#), Note

### *Accounts, reports and information*

#### [<sup>F339</sup> **Accounts to be kept.**

- (1) This section applies where a defined authority carry out, in the financial year beginning in 1989 or in a subsequent financial year, work which falls within a defined activity and fulfils the condition that—
- (a) it is carried out under a works contract to which section 4 above applies, or
  - (b) section 6 above applies to it.
- (2) For each financial year in which the work is carried out, the authority shall keep an account as regards all work which falls within that activity, is carried out by them in that year and fulfils that condition.
- (3) Where any work falling within the activity is carried out under a works contract, the authority shall credit to the account kept under this section as regards the activity for the financial year in which the work is carried out such an amount as is specified in the contract, or ascertained under it, as the price for carrying out the work in that year.
- (4) Where any work falling within the activity is functional work, the authority shall enter, in the account kept under this section as regards the activity for the financial year in which the work is carried out, such item as is necessary to carry out any intention expressed by the authority in relation to the work in any bid prepared under section 7(6) above.
- (5) The Secretary of State may specify—
- (a) items which are to be entered in accounts kept under this section (in addition to items to be entered by virtue of subsections (3) and (4) above), and
  - (b) the method of determining the amount of any item to be entered by virtue of the specification.
- (6) No item may be credited to an account kept under this section except an item required to be credited by subsection (3) or (4) above or by virtue of a specification under subsection (5) above.
- (7) Where an authority is required under this section to keep an account of work falling within a defined activity, nothing in section 2(2) of the <sup>M5</sup>Local Authorities (Goods and

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Services) Act 1970 shall be taken to require the authority to keep a separate account in respect of any agreement for the carrying out of that work.]

#### Textual Amendments

**F33** S. 9 repealed (E.W.) (27.7.1999 with effect in accordance with ss. 21, 27 of the amending Act) by 1999 c. 27, ss. 21(1)(b), 34, **Sch. 2(1)**, Note

#### Modifications etc. (not altering text)

- C45** S. 9 applied (9.1.1995) by S.I. 1994/3167, **reg. 13**  
S. 9 applied (with modification) (15.8.1994) by 1994 c. 19, s. 52 (with ss. 54(5)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1994/2109, **art. 2**
- C46** S. 9(4) applied (9.1.1995) by S.I. 1994/3167, **reg. 14(5)(b)**

#### Marginal Citations

**M5** 1970 c. 39.

### [<sup>F34</sup>10 Financial objectives to be met.

- (1) This section applies where a defined authority carry out, in the financial year beginning in 1989 or in a subsequent financial year, work which falls within a defined activity and fulfils the condition that—
  - (a) it is carried out under a works contract to which section 4 above applies, or
  - (b) section 6 above applies to it.
- (2) The authority shall secure that such financial objective as the Secretary of State may specify for the year concerned is met by—
  - (a) the revenue for all work which falls within that activity, is carried out by them in that year and fulfils that condition, or
  - (b) that revenue, adjusted by making such additions or subtractions (or both) as may be required by the specification.
- (3) The reference in subsection (2) above to the revenue for the work concerned is to the aggregate of the items credited to the account kept under section 9 above as regards the work.
- (4) A specification under this section may define the financial objective concerned by reference to such factors as the Secretary of State thinks fit.]

#### Textual Amendments

**F34** S. 10 repealed (E.W.) (27.7.1999 with effect in accordance with ss. 21, 27 of the amending Act) by 1999 c. 27, ss. 21(1)(b), 34, **Sch. 2(1)**, Note

#### Modifications etc. (not altering text)

- C47** S. 10 applied (9.1.1995) by S.I. 1994/3167, **reg. 13**  
S. 10 applied (with modification) (15.8.1994) by 1994 c. 19, s. 52 (with ss. 54(5)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1994/2109, **art. 2**

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**[<sup>F35</sup>11 Report for financial year.**

- (1) This section applies where a defined authority carry out, in the financial year beginning in 1989 or in a subsequent financial year, work which falls within a defined activity and fulfils the condition that—
  - (a) it is carried out under a works contract to which section 4 above applies, or
  - (b) section 6 above applies to it.
- (2) The authority shall prepare a report for the financial year concerned, containing as regards all work which falls within that activity, is carried out by them in that year and fulfils that condition—
  - (a) a summary of the account kept for that year under section 9 above as regards the work,
  - (b) a statement showing whether the requirement under section 10 above has been fulfilled for that year as regards the work,
  - (c) a statement identifying such of the work (if any) as falls only within the activity by virtue of a decision under section 2(5) above,
  - (d) a statement identifying such of the work (if any) as falls within the activity by virtue of a decision under section 2(7) above, and
  - (e) a statement identifying such of the work (if any) as is work to which section 6 above applies by virtue of a decision under section 6(4) above.
- (3) The summary referred to in subsection (2)(a) above shall present fairly the financial result, during the financial year concerned, of the work having been carried out and shall be expressed in such form as the Secretary of State may specify.
- (4) A report under this section shall also contain, as regards the work, such other information (and expressed in such form) as the Secretary of State may specify.
- (5) A report under this section shall also contain such information (and expressed in such form) as the Secretary of State may specify as regards work which falls within the defined activity, was carried out by the authority in the financial year preceding the financial year concerned, and fulfils the condition that—
  - (a) it was carried out under a works contract to which section 4 above applies, or
  - (b) section 6 above applies to it.
- (6) The report may contain such other information as the authority think fit.
- (7) The report must be prepared not later than 30th September in the financial year following that for which it is prepared, and the authority concerned shall send a copy to the Secretary of State and to their auditor not later than 31st October in the financial year following that for which it is prepared.
- (8) Where an authority's auditor has been sent a copy of a report in accordance with subsection (7) above, he shall consider the statement contained in the report by virtue of subsection (2)(b) above, and shall give his written opinion on the statement to the authority and to the Secretary of State.
- (9) For the purposes of subsections (7) and (8) above an authority's auditor is the person who under any enactment is appointed, for the financial year for which the report is prepared, to audit the authority's accounts.]

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#### Textual Amendments

**F35** S. 11 repealed (E.W.) (27.7.1999 with effect in accordance with ss. 21, 27 of the amending Act) by 1999 c. 27, ss. 21(1)(b), 34, **Sch. 2(1)**, Note

#### Modifications etc. (not altering text)

**C48** S. 11 applied (9.1.1995) by S.I. 1994/3167, **reg. 13**

S. 11 applied (with modification) (15.8.1994) by 1994 c. 19, s. 52 (with ss. 54(5)(7), 55(5), Sch. 17 para. 22(1), 23(2)); S.I. 1994/2109, **art. 2**

**C49** S. 11(7) excluded (9.1.1995) by S.I. 1994/3167, **reg. 16(2)**

### [<sup>F36</sup>12 Information.

- (1) If a defined authority, having decided to carry out functional work to which section 6 above applies, are requested by a person to supply the person with a statement falling within subsection (2) below, they shall supply such a statement to the person.
- (2) A statement falling within this subsection is a written statement showing—
  - (a) the authority's decision to carry out the work,
  - (b) the financial provisions shown in each offer (if any) to carry out the work made in response to an invitation made under section 7(4) above, and
  - (c) the financial provisions of the bid prepared under section 7(6) above in relation to the work.
- (3) Subsections (4) to (6) below apply to any report required to be prepared under section 11 above.
- (4) Any person may, at a place and time stated by an authority who have prepared a report, inspect the report free of charge.
- (5) An authority who have prepared a report shall supply a copy (on request) to any person who pays such charge as the authority may reasonably require.
- (6) A defined authority shall publish in at least one appropriate newspaper notice of—
  - (a) the place and time at which any report prepared by the authority may be inspected in accordance with subsection (4) above,
  - (b) the fact that copies of the report are available for supply in accordance with subsection (5) above, and
  - (c) the charge for each copy.
- (7) For the purposes of subsection (6) above an appropriate newspaper is—
  - (a) in the case of the Commission for the New Towns, a national newspaper, and
  - (b) in the case of any other defined authority, a newspaper circulating in their area.]

#### Textual Amendments

**F36** S. 12 repealed (E.W.) (27.7.1999 with effect in accordance with ss. 21, 27 of the amending Act) by 1999 c. 27, ss. 21(1)(b), 34, **Sch. 2(1)**, Note

#### Modifications etc. (not altering text)

**C50** S. 12 applied (9.1.1995) by S.I. 1994/3167, **reg. 13**



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S. 12 applied (with modification) (15.8.1994) by 1994 c. 19, s. 52 (with ss. 54(5)(7), 55(5), Sch. 17 para. 22(1), 23(2)); S.I. 1994/2109, art. 2

### Sanctions

#### [<sup>F37</sup>13 Notice for purpose of getting information.

- (1) If it appears to the Secretary of State that in the financial year beginning in 1989 or in a subsequent financial year a defined authority—
- (a) have (as a bidding authority) entered into a contract to carry out work and have done so in contravention of section 4 above,
  - [<sup>F38</sup>(b) have carried out work as regards which the conditions set out in section 7 above have to be but, in the circumstances, have not been fulfilled,
  - (ba) have decided to carry out work as regards which (if the work is carried out in accordance with the decision) those conditions will have to be but, in the circumstances in which it is proposed to carry it out, will not be fulfilled,]
  - (c) have carried out work in circumstances where section 9 above has not been complied with for the year concerned in relation to the defined activity within which the work falls or in relation to an account required by that section to be kept for the year concerned as regards the activity,
  - (d) have carried out work in circumstances where section 10 above has not been complied with for the year concerned in relation to the defined activity within which the work falls, or
  - (e) have carried out work in circumstances where section 11 above has not been complied with for the year concerned in relation to the defined activity within which the work falls or in relation to a report required by that section to be prepared for the year concerned as regards the activity,
- he may serve on the authority a written notice falling within subsection (2) below.
- (2) The notice is one which—
- (a) informs the authority that it appears to him that in a financial year identified in the notice they have acted as mentioned in one of the paragraphs (so identified) of subsection (1) above,
  - (b) identifies the work concerned and states why it so appears, and
  - (c) contains the requirement mentioned in subsection (3) below.
- (3) The requirement is that the authority submit to him within such time as is specified in the notice a written response which—
- (a) states that they have not acted as mentioned in the paragraph concerned of subsection (1) above and justifies the statement, or
  - (b) states that they have acted as so mentioned and gives reasons why he should not give a direction under section 14 below.
- (4) Where work is specified under section 6(3) above as a proportion of particular work, the reference in subsection (2)(b) above to work is to the work of which the proportion forms a part.
- (5) The Secretary of State may serve on an authority different notices under this section identifying the same financial year and the same work, whether they identify the same paragraph or different paragraphs of subsection (1) above.]

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#### Textual Amendments

- F37** S. 13 repealed (E.W.) (27.7.1999 with effect in accordance with ss. 21, 27) by 1999 c. 27, ss. 21(1)(b), 34, Sch. 2(1), Note
- F38** S. 13(1)(b)(ba) substituted for s. 13(1)(b) (4.1.1993) by Local Government Act 1992 (c. 19), s. 11, Sch. 1, para. 13; S.I. 1992/3241, art. 2

#### Modifications etc. (not altering text)

- C51** S. 13 applied (9.1.1995) by S.I. 1994/3167, reg. 13  
S. 13 applied (with modification) (15.8.1994) by 1994 c. 19, s. 52 (with ss. 54(5)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1994/2109, art. 2
- C52** S. 13(1)(b) applied (9.1.1995) by S.I. 1994/3167, reg. 14(5)(c)
- C53** S. 13(4)(5) applied (9.1.1995) by S.I. 1994/3167, reg. 17(3)

### [<sup>F39</sup>14 Power to give directions.

- (1) Subsection (2) below applies where—
- the Secretary of State has served a notice on an authority under section 13 above,
  - the time specified in the notice has expired (whether or not he has received a written response to the notice), and
  - it still appears to him that the authority have acted as mentioned in the paragraph concerned of section 13(1) above.
- (2) The Secretary of State may direct that with effect from such date as is specified in the direction the authority—
- shall cease to have power to carry out any work falling within the appropriate activity,
  - shall cease to have power to carry out such work falling within that activity as is identified in the direction,
  - shall only have power to carry out work falling within that activity if such conditions as are specified in the direction are fulfilled, or
  - shall, as regards such work falling within that activity as is identified in the direction, only have power to carry it out if such conditions as are specified in the direction are fulfilled.
- (3) Where the Secretary of State has given a direction under subsection (2) above or this subsection (the previous direction) he may give a direction (a new direction) that with effect from such date as is specified in the new direction—
- any prohibition applying by virtue of the previous direction (whether the prohibition applies outright or if conditions are not fulfilled) shall cease to apply,
  - any outright prohibition applying by virtue of the previous direction is replaced by a prohibition applying (as regards the same work) if conditions specified in the new direction are not fulfilled, or
  - any prohibition applying as regards work by virtue of the previous direction (whether the prohibition applies outright or if conditions are not fulfilled) is replaced by a prohibition which applies only to such of that work as is identified in the new direction but which is otherwise in the same terms as the prohibition in the previous direction.

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- (4) If the Secretary of State directs under this section that an authority shall cease to have power to carry out work, or shall only have power to carry out work if certain conditions are fulfilled, the direction shall have effect notwithstanding any enactment by virtue of which they are required or authorised to do the work or (as the case may be) to do it without the need for the conditions to be fulfilled.
- [ The conditions that may be imposed by a direction given under this section in relation
- <sup>F40</sup>(4A) to the carrying out of any work include a condition restricting the carrying out of the work to cases where—
- (a) the Secretary of State has been satisfied as to any matter specified or described in the direction, or
  - (b) the work is carried out under and in accordance with an authorisation or consent given for the purposes of the direction by the Secretary of State.
- (4B) Where a direction under this section imposes any condition in relation to the carrying out of any work, that direction may provide that the requirement that the condition is fulfilled is to have effect, in relation to that work, instead of any requirement which (apart from the direction) would have effect in relation to that work by virtue of this Part.
- (4C) Without prejudice to subsection (3) above, the power to give a direction under this section shall include power, at any time, to make such variations of a direction under this section as may be agreed with the authority to which the direction relates.]
- (5) In this section “the appropriate activity” means the defined activity within which the work identified in the notice concerned falls.]

#### Textual Amendments

- F39** S. 14 repealed (E.W.) (27.7.1999 with effect in accordance with ss. 21, 27 of the amending Act) by 1999 c. 27, ss. 21(1)(b), 34, **Sch. 2(1)**, Note
- F40** S. 14(4A)(4B)(4C) inserted (4.1.1993) by **Local Government Act 1992 (c. 19)**, s. 11, **Sch. 1**, para. 14; S.I. 1992/3241, **art. 2**

#### Modifications etc. (not altering text)

- C54** S. 14 applied (9.1.1995) by S.I. 1994/3167, **regs. 13**, 18  
S. 14 applied (with modification) (15.8.1994) by 1994 c. 19, s. 52 (with ss. 54(5)(7), 55(5), **Sch. 17 paras. 22(1), 23(2)**); S.I. 1994/2109, **art. 2**
- C55** S. 14(1)(c) applied (9.1.1995) by S.I. 1994/3167, **reg. 14(5)(c)**

#### Miscellaneous

#### <sup>F41</sup>15 Orders, regulations, specifications and directions.

- (1) The power to make an order under section 2(3) above 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 resolution of each House of Parliament.
- (2) The power to make an order under section 2(9) [<sup>F42</sup>or 2(10)] above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

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- (3) The power to make regulations under any of sections 4 to 8 above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) The power to specify under section 9, 10 or 11 above, and the power to give a direction under section 14 above, shall be exercised in writing.
- (5) An order under section 2(9) [<sup>F42</sup> or 2(10)]above, and a specification under section 9, 10 or 11 above, may make different provision for different cases or descriptions of case (whether for different areas, different defined authorities or kinds of authority, different defined activities, or otherwise).
- (6) Regulations under any of sections 4 to 8 above may make different provision for different cases or descriptions of case (whether for different areas, different defined authorities or kinds of authority, different defined activities, different kinds of work falling within the same activity, or otherwise).
- (7) Any order, regulations, specification or direction mentioned in this section may include such supplementary, incidental, consequential or transitional provisions as appear to the Secretary of State to be necessary or expedient.
- (8) In particular—
  - (a) an order under section 2(3) above may include provision amending or adapting any provision of this Act for the purpose of interpreting any paragraph added by the order or for purposes of commencement or otherwise, and
  - (b) a direction under section 14 above may include provision with respect to work in progress or outstanding contractual commitments.]

#### Subordinate Legislation Made

- P3** S. 15: for exercises of this power see Index to Government orders.
- P4** S. 15(5); S. 2(9)(with s. 15(5)) power exercised by [S.I. 1991/262](#) and [1991/312](#)  
S. 15(5): s. 2(9) (with s. 15(5)) power exercised by [S.I. 1991/2438](#)  
S. 15(5): s. 2(9) (with s. 15(5)) power exercised by [S.I. 1991/2783](#).
- P5** S. 15(6)(7): s. 6(3) (with s. 15(6)(7)) power exercised by [S.I. 1991/2006](#)  
S. 15(6)(7): s. 6(3) (with s. 15(6)(7)) power exercised (S.) by [S.I. 1991/2548](#)  
S. 15(6)(7): s. 6(3) (with s. 15(6)(7)) power exercised by [S.I. 1991/2711](#)  
S. 15(6)(7): s. 6(3) (with s. 15(6)(7)) power exercised by [S.I. 1991/2782](#)
- P6** S. 15. 15(6); S. 6(3) (with ss. 8(1) and 15(6)) power exercised by [S.I. 1991/232](#).

#### Textual Amendments

- F41** S. 15 repealed (E.W.) (27.7.1999 with effect in accordance with ss. 21, 27 of the amending Act) by [1999 c. 27, ss. 21\(1\)\(b\), 34, Sch. 2\(1\)](#), Note
- F42** Words in s. 15(2)(5) inserted (S.) (4.1.1995) by [1994 c. 39, s. 180\(1\), Sch. 13 para. 156\(4\)](#); [S.I. 1994/2850, art. 3](#)

#### Modifications etc. (not altering text)

- C56** S. 15 applied (with modification) (15.8.1994) by [1994 c. 19, s. 52](#) (with ss. 54(5)(7), 55(5), [Sch. 17 paras. 22\(1\), 23\(2\)](#)); [S.I. 1994/2109, art. 2](#)

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## [<sup>F43</sup>16 **Supplementary.**

- (1) No provision of this Part relating to accounts shall prejudice any provision of [<sup>F44</sup>the Audit Commission Act 1998], or Part VII of the <sup>M6</sup>Local Government (Scotland) Act 1973, relating to the accounts.
- (2) Nothing in sections 13 and 14 above shall prejudice any remedy available to a person (apart from those sections) in respect of a failure to observe a provision of this Part.
- (3) In Schedule 1 to the <sup>M7</sup>Local Government Finance Act 1987 (list of accounts) the following shall be inserted after paragraph 13—

“14 Any account kept under section 9 of the Local Government Act 1988.”]

### Textual Amendments

- F43** S. 16 repealed (E.W.) (27.7.1999 in accordance with ss. 21, 27 of the amending Act) by 1999 c. 27, ss. 21(1)(b), 34, **Sch. 2(1)**, Note
- F44** Words in s. 16(1) substituted (E.W.) (11.9.1998) by 1998 c. 18, ss. 54(1), 55(2), **Sch. 3 para. 15**

### Modifications etc. (not altering text)

- C57** S. 16 applied (with modification) (15.8.1994) by 1994 c. 19, s. 52 (with ss. 54(5)(7), 55(5), **Sch. 17 paras. 22(1), 23(2)**); S.I. 1994/2109, **art. 2**

### Marginal Citations

- M6** 1973 c. 65.
- M7** 1987 c. 6.

## PART II

### PUBLIC SUPPLY OR WORKS CONTRACTS

### Modifications etc. (not altering text)

- C58** Pt. II (ss. 17-23) applied (*temp.* until 1.4.1996) by S.I. 1995/789, art. 2, **Sch. para. 10**
- Pt. II (ss. 17-23): power to apply conferred (1.9.1997) by 1997 c. 50, s. 44, **Sch. 4** para. (h)(ii); S.I. 1997/1930, **art. 3**

## 17 **Local and other public authority contracts: exclusion of non-commercial considerations.**

- (1) It is the duty of every public authority to which this section applies, in exercising, in relation to its public supply or works contracts, any proposed or any subsisting such contract, as the case may be, any function regulated by this section to exercise that function without reference to matters which are non-commercial matters for the purposes of this section.
- (2) The public authorities to which this section applies are those specified in Schedule 2 to this Act.

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- (3) The contracts which are public supply or works contracts for the purposes of this section are contracts for the supply of goods or materials, for the supply of services or for the execution of works; but this section does not apply in relation to contracts entered into before the commencement of this section.
- (4) The functions regulated by this section are—
- (a) the inclusion of persons in or the exclusion of persons from—
    - (i) any list of persons approved for the purposes of public supply or works contracts with the authority, or
    - (ii) any list of persons from whom tenders for such contracts may be invited;
  - (b) in relation to a proposed public supply or works contract with the authority—
    - (i) the inclusion of persons in or the exclusion of persons from the group of persons from whom tenders are invited,
    - (ii) the accepting or not accepting the submission of tenders for the contract,
    - (iii) the selecting the person with whom to enter into the contract, or
    - (iv) the giving or withholding approval for, or the selecting or nominating, persons to be sub-contractors for the purposes of the contract; and
  - (c) in relation to a subsisting public supply or works contract with the authority—
    - (i) the giving or withholding approval for, or the selecting or nominating, persons to be sub-contractors for the purposes of the contract, or
    - (ii) the termination of the contract.
- (5) The following matters are non-commercial matters as regards the public supply or works contracts of a public authority, any proposed or any subsisting such contract, as the case may be, that is to say—
- (a) the terms and conditions of employment by contractors of their workers or the composition of, the arrangements for the promotion, transfer or training of or the other opportunities afforded to, their workforces;
  - (b) whether the terms on which contractors contract with their sub-contractors constitute, in the case of contracts with individuals, contracts for the provision by them as self-employed persons of their services only;
  - (c) any involvement of the business activities or interests of contractors with irrelevant fields of Government policy;
  - (d) the conduct of contractors or workers in industrial disputes between them or any involvement of the business activities of contractors in industrial disputes between other persons;
  - (e) the country or territory of origin of supplies to, or the location in any country or territory of the business activities or interests of, contractors;
  - (f) any political, industrial or sectarian affiliations or interests of contractors or their directors, partners or employees;
  - (g) financial support or lack of financial support by contractors for any institution to or from which the authority gives or withholds support;
  - (h) use or non-use by contractors of technical or professional services provided by the authority under the <sup>M8</sup>Building Act 1984 or the <sup>M9</sup>Building (Scotland) Act 1959.

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- (6) The matters specified in subsection (5) above include matters which have occurred in the past as well as matters which subsist when the function in question falls to be exercised.
- (7) Where any matter referable to a contractor would, as a matter specified in subsection (5) above, be a non-commercial matter in relation to him, the corresponding matter referable to—
- (a) a supplier or customer of the contractor;
  - (b) a sub-contractor of the contractor or his supplier or customer;
  - (c) an associated body of the contractor or his supplier or customer; or
  - (d) a sub-contractor of an associated body of the contractor or his supplier or customer;

is also, in relation to the contractor, a non-commercial matter for the purposes of this section.

- (8) In this section—

“approved list” means such a list as is mentioned in subsection (4)(a) above;

“associated body”, in relation to a contractor, means any company which (within the meaning of the <sup>M10</sup>Companies Act 1985) is the contractor’s holding company or subsidiary or is a subsidiary of the contractor’s holding company;

“business” includes any trade or profession;

“business activities” and “business interests”, in relation to a contractor or other person, mean respectively any activities comprised in, or any investments employed in or attributable to, the carrying on of his business and “activity” includes receiving the benefit of the performance of any contract;

“contractor”, except in relation to a subsisting contract, means a “potential contractor”, that is to say—

- (a) in relation to functions as respects an approved list, any person who is or seeks to be included in the list; and
- (b) in relation to functions as respects a proposed public supply or works contract, any person who is or seeks to be included in the group of persons from whom tenders are invited or who seeks to submit a tender for or enter into the proposed contract, as the case may be;

“exclusion” includes removal;

“Government policy” falls within “irrelevant fields” for the purposes of this section if it concerns matters of defence or foreign or Commonwealth policy and “involve”, as regards business activities and any such field of policy, includes the supply of goods or materials or services to, or the execution of works for, any authority or person having functions or carrying on business in that field and, as regards business interests and any such field of policy, includes investment in any authority or person whose business activities are so involved;

“industrial dispute” has, as regards a dispute in Great Britain, the same meaning as trade dispute in [<sup>F45</sup>Part V of the Trade Union and Labour Relations (Consolidation) Act 1992] and “involve”, as regards business activities and an industrial dispute, includes the supply of goods, materials or services to or by, or the execution of works for or by, any party to the dispute, any other person affected by the dispute, or any authority concerned with the enforcement of law and order in relation to the dispute;



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“political, industrial or sectarian affiliations or interests” means actual or potential membership of, or actual or potential support for, respectively, any political party, any employers’ association or trade union or any society, fraternity or other association;

“suppliers or customers” and “sub-contractors” includes prospective suppliers or customers and sub-contractors; and “supplier”, in relation to a contractor, includes any person who, in the course of business, supplies him with services or facilities of any description for the purposes of his business;

and “employers’ association” and “trade union” have, as regards bodies constituted under the law of England and Wales or Scotland, the same meaning as in the [<sup>F46</sup>Trade Union and Labour Relations (Consolidation) Act 1992].

(9) This section is subject to section 18 below.

#### Textual Amendments

- F45** S. 17(8): words in definition of “industrial dispute” substituted (16.10.1992) by [Trade Union and Labour Relations \(Consolidation\) Act 1992 \(c. 52\), ss. 300\(2\), 302, Sch. 2 para. 38\(a\)](#)
- F46** Words in s. 17(8) substituted (16.10.1992) by [Trade Union and Labour Relations \(Consolidation\) Act 1992 \(c. 52\), ss. 300\(2\), 302, Sch. 2 para. 38\(b\)](#)

#### Modifications etc. (not altering text)

- C59** S. 17 power to modify conferred (27.9.1999 in relation to E. and in relation to W. for specified purposes only and otherwise 1.10.1999) by [1999 c. 27, s. 19\(1\); S.I. 1999/2169, art. 3\(2\), Sch. 2; S.I. 1999/2815, art. 2](#)
- C60** S. 17 extended (1.4.1995) by [S.I. 1995/401, art. 18, Sch. para. 12](#)
- C61** S. 17 modified (W.) (31.3.2002 with application as mentioned in art. 1(2)) by [The Local Government Best Value \(Exclusion of Non-commercial Considerations\) \(Wales\) Order 2002 \(S.I. 2002/678\), art. 2](#)

#### Marginal Citations

- M8** 1984 c. 55.
- M9** 1959 c. 24.
- M10** 1985 c. 6.

## 18 Race relations matters.

- (1) Except to the extent permitted by subsection (2) below, section 71 of the <sup>M11</sup>Race Relations Act 1976 (local authorities to have regard to need to eliminate unlawful racial discrimination and promote equality of opportunity, and good relations, between persons of different racial groups) shall not require or authorise a local authority to exercise any function regulated by section 17 above by reference to a non-commercial matter.
- (2) Subject to subsection (3) below, nothing in section 17 above shall preclude a local authority from—
- asking approved questions seeking information or undertakings relating to workforce matters and considering the responses to them, or
  - including in a draft contract or draft tender for a contract terms or provisions relating to workforce matters and considering the responses to them,

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if, as the case may be, consideration of the information, the giving of the undertaking or the inclusion of the term is reasonably necessary to secure compliance with the said section 71.

- (3) Subsection (2) above does not apply to the function of terminating a subsisting contract and, in relation to functions as respects approved lists or proposed contracts, does not authorise questions in other than written form.
- (4) Where it is permissible under subsection (2) above to ask a question it is also permissible to make, if it is in writing, an approved request for evidence in support of an answer to the question.
- (5) The Secretary of State may specify—
- (a) questions which are to be approved questions for the purposes of this section; and
  - (b) descriptions of evidence which, in relation to approved questions, are to be approved descriptions of evidence for those purposes;
- and the powers conferred by this subsection shall be exercised in writing.
- (6) Any specification under subsection (5) above may include such consequential or transitional provisions as appear to the Secretary of State to be necessary or expedient.
- (7) In this section—

“approved question” means a question for the time being specified by the Secretary of State under subsection (5) above;

“approved request for evidence” means a request for evidence of a description for the time being specified by the Secretary of State under that subsection in relation to an approved question;

“workforce matters” means matters falling within paragraph (a), but no other paragraph, of subsection (5) of section 17 above;

and any expression used in this section and section 17 above has the same meaning in this section as in that section.

[<sup>F47</sup>(7A) Any reference in this section to local authority shall be deemed to include a reference to a National Park authority.]

#### Textual Amendments

**F47** S. 18(7A) inserted (19.9.1995) by 1995 c. 25, ss. 65(7), 125(2), **Sch. 8 para. 8(4)** (with ss. 7(6), 115, 117)

#### Marginal Citations

**M11** 1976 c. 74.

## 19 Provisions supplementary to or consequential on section 17.

- (1) The Secretary of State may, by order made by statutory instrument, specify as a non-commercial matter for the purposes of section 17 above, any other matter which appears to him to be irrelevant to the commercial purposes of public supply or works contracts of any description.

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- (2) The power conferred by subsection (1) above includes power to apply section 17(6) and (7) above to any matter specified in the order and to amend any definition in section 17(8) above of an expression used in any paragraph of section 17(5) above without making any other provision.
- (3) An order under subsection (1) above may include such consequential and transitional provisions as appear to the Secretary of State to be necessary or expedient.
- (4) No order under subsection (1) above shall be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.
- (5) Section 17 above applies to a public authority where, in exercising functions regulated by that section, the authority is, as well as where it is not, acting on behalf of a Minister of the Crown.
- (6) Where a public authority makes arrangements under section 101 of the <sup>M12</sup>Local Government Act 1972 or in relation to Scotland section 56 of the <sup>M13</sup>Local Government (Scotland) Act 1973 for the exercise by another public authority of any function regulated by section 17 above, section 17 shall apply to that other public authority in exercising that function as if it were exercising the function in relation to its own public supply or works contracts, any proposed or any subsisting such contract, as the case may be.
- (7) The duty imposed by section 17(1) above does not create a criminal offence but—
  - (a) in proceedings for judicial review, the persons who have a sufficient interest or, in Scotland, title and interest in the matter shall include any potential contractor or, in the case of a contract which has been made, former potential contractor (or, in any case, any body representing contractors), as such; and
  - (b) a failure to comply with it is actionable by any person who, in consequence, suffers loss or damage.
- (8) In any action under section 17(1) above by a person who has submitted a tender for a proposed public supply or works contract arising out of the exercise of functions in relation to the proposed contract the damages shall be limited to damages in respect of expenditure reasonably incurred by him for the purpose of submitting the tender.
- (9) Nothing in section 17 above or subsection (1) above implies that the exercise of any function regulated by that section may not be impugned, in proceedings for judicial review, on the ground that it was exercised by reference to other matters than those which are non-commercial matters for the purposes of that section.
- (10) If a public authority, in relation to public supply or works contracts or any proposed such contract, as the case may be—
  - (a) asks a question of any potential contractor relating to any non-commercial matter other than a question consideration of the answer to which is permitted by section 18 above, or
  - (b) submits to any potential contractor a draft contract or draft tender for a contract which includes terms or provisions relating to any non-commercial matter other than a term or provision the inclusion of which in the contract is permitted by section 18 above,the authority shall be treated, for the purposes of section 17 above, as exercising functions regulated by that section by reference to non-commercial matters.

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- (11) In consequence of section 17 above, the following provisions (which require local authorities to secure the insertion of fair wages clauses in all housing contracts), namely—
- (a) section 52(a) of the <sup>M14</sup>Housing Act 1985, and
  - (b) section 337 of the <sup>M15</sup>Housing (Scotland) Act 1987,
- shall cease to have effect.
- (12) Expressions used in this section and section 17 above have the same meaning in this section as in that section.

#### Marginal Citations

- M12 1972 c. 70.  
M13 1973 c. 65.  
M14 1985 c. 68.  
M15 1987 c. 26.

## 20 Duty of public authorities to give reasons for certain decisions within section 17.

- (1) Where a public authority exercises a function regulated by section 17 above by making, in relation to any person, a decision to which this section applies, it shall be the duty of the authority forthwith to notify that person of the decision and, if that person so requests in writing within the period of 15 days beginning with the date of the notice, to furnish him with a written statement of the reasons for the decision.
- (2) This section applies to the following decisions in relation to any person, namely—
  - (a) in relation to an approved list, a decision to exclude him from the list,
  - (b) in relation to a proposed public supply or works contract—
    - (i) where he has asked to be invited to tender for the contract, a decision not to invite him to tender,
    - (ii) a decision not to accept the submission by him of a tender for the contract,
    - (iii) where he has submitted a tender for the contract, a decision not to enter into the contract with him, or
    - (iv) a decision to withhold approval for, or to select or nominate, persons to be sub-contractors for the purposes of the contract, or
  - (c) in relation to a subsisting public supply or works contract with him—
    - (i) a decision to withhold approval for, or to select or nominate, persons to be sub-contractors for the purposes of the contract, or
    - (ii) a decision to terminate the contract.
- (3) A statement of reasons under subsection (1) above shall be sent to the person requesting it within the period of 15 days beginning with the date of the request.
- (4) The Secretary of State may by order amend subsection (1) or (3) above so as to substitute for the period specified in that subsection such other period as he thinks fit and such an order may make different amendments of subsections (1) and (3).
- (5) The power to make an order under subsection (4) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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- (6) Expressions used in this section and section 17 above have the same meaning in this section as in that section.

## **21 Transitional duty of public authorities as regards existing lists.**

- (1) Subject to subsection (3) below, it is the duty of a public authority which, at the commencement of this section, maintains an approved list—
- (a) to consider whether persons have been included in or excluded from the list by reference to non-commercial matters, and
  - (b) if it appears to the authority that that is the case to compile the list afresh in accordance with subsections (4) to (6) below.
- (2) Persons shall be treated by a public authority as having been excluded from a list by reference to non-commercial matters if, in relation to the list, the authority has—
- (a) circulated to potential contractors questionnaires including questions relating to non-commercial matters, or
  - (b) notified potential contractors of its intention to have regard to non-commercial matters, or
  - (c) issued statements of policy framed by reference to non-commercial matters.
- (3) Inclusion or exclusion by a local authority from its list by reference to a non-commercial matter does not give rise to the duty to compile the list afresh under subsection (1) above if that matter falls within paragraph (a) (but no other paragraph) of section 17(5) above and the local authority's action was reasonably necessary to secure compliance with section 71 of the <sup>M16</sup>Race Relations Act 1976.
- (4) The duty of an authority to compile afresh an approved list shall be discharged as follows—
- (a) the authority shall publish notice of its intention to compile the list afresh and (by the notice) invite persons to apply within a specified period to be included in the list; and
  - (b) at the end of that period the authority shall proceed to compile the list afresh from among the applicants in accordance with the duty imposed by section 17 above.
- (5) Publication by an authority of the notice required by subsection (4) above shall be effected by causing the notice to be published—
- (a) in at least one newspaper circulating in the authority's area or, if the extent of the authority's functions so require, in at least one national newspaper; and
  - (b) in at least one newspaper or journal circulating among such persons as undertake contracts of the description to which the list relates.
- (6) The period specified in the notice under subsection (4) above as the period within which applications are to be made shall not be shorter than the period of 28 days beginning with the date of publication of the notice.
- (7) The duty imposed by this section shall be discharged by a public authority as soon as is reasonably practicable after the commencement of this section and in any event within the period of three months.
- (8) This section does not create a criminal offence but paragraph (a) of section 19(7) above applies for the purposes of the duty imposed by this section as it applies for the purposes of the duty imposed by section 17(1) above.

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- (9) Expressions used in this section and section 17 above have the same meaning in this section as in that section.

#### Marginal Citations

M16 1976 c. 74.

### 22 Exclusion of charges for inclusion in approved list.

- (1) A public authority which maintains an approved list shall not require a person to pay any sum as a condition of his inclusion or continued inclusion in the list or of his being considered for such inclusion.
- (2) Subsection (1) above does not create an offence but a contravention of it is actionable by the person seeking to be included or retained in the list.
- (3) Expressions used in this section and section 17 above have the same meaning in this section as in that section.

### 23 Commencement.

Sections 17 to 22 above shall come into force at the end of the period of 14 days beginning with the day on which this Act is passed.

## PART III

### PRIVATELY LET HOUSING ACCOMMODATION

### 24 Power to provide financial assistance for privately let housing accommodation.

- (1) Subject to section 25 below, a local housing authority shall have power to provide any person with financial assistance for the purposes of, or in connection with, the acquisition, construction, conversion, rehabilitation, improvement, maintenance or management (whether by that person or by another) of any property which is or is intended to be privately let as housing accommodation.
- (2) For the purposes of this section and section 25 below a local authority provide a person with financial assistance if they do or agree to do any of the following, that is to say—
  - (a) make a grant or loan to that person;
  - (b) guarantee or join in guaranteeing the performance of any obligation owed to or by that person;
  - (c) indemnify or join in indemnifying that person in respect of any liabilities, loss or damage; or
  - (d) if that person is a body corporate, acquire share or loan capital in that person.
- (3) For the purposes of this section property is privately let as housing accommodation at any time when—
  - (a) it is occupied as housing accommodation in pursuance of a lease or licence of any description or under a statutory tenancy; and

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- (b) the immediate landlord of the occupier of the property is a person other than a local authority in England and Wales or a public-sector landlord in Scotland.
- (4) Neither section 438 of the <sup>M17</sup>Housing Act 1985 (local authority mortgage interest rates) nor section 219 of the <sup>M18</sup>Housing (Scotland) Act 1987 (local authority home-loan interest rates) shall apply in relation to anything done under this section.
- (5) In the <sup>M19</sup>Housing Associations Act 1985—
  - <sup>F48</sup>(a) .....
  - (b) ..... <sup>F49</sup>
  - <sup>F48</sup>(c) .....
- (6) In this Part—
  - “disposal”, in relation to any land, includes a disposal by the creation of any interest in the land;
  - “housing accommodation”, in relation to England and Wales, has the same meaning as in Part II of the <sup>M20</sup>Housing Act 1985;
  - “landlord”, in relation to a person whose occupation of any property is in pursuance of a lease or statutory tenancy, has the same meaning as in the <sup>M21</sup>Landlord and Tenant Act 1985 or, in Scotland, the <sup>M22</sup>Rent (Scotland) Act 1984 and, in relation to a person whose occupation is in pursuance of a licence, means the person who for the time being owns the interest in right of which the licence was granted;
  - “lease”, in relation to England and Wales, has the same meaning as in the Housing Act 1985;
  - “loan” includes any form of credit and the remission (whether in whole or in part and whether temporarily or permanently) of any liability or obligation;
  - “local authority”—
    - (a) in relation to England and Wales, means a local housing authority or a county council;
    - (b) in relation to Scotland, means a [<sup>F50</sup>council constituted under section 2 of the Local Government etc. (Scotland) Act 1994];
  - “local housing authority”—
    - (a) in relation to England and Wales, has the same meaning as in the Housing Act 1985;
    - (b) in relation to Scotland, means [<sup>F51</sup>a local authority];
  - “public-sector landlord”, in relation to Scotland, means—
    - (a) a local authority;
    - (b) a joint board or joint committee within the meaning of the <sup>M23</sup>Local Government (Scotland) Act 1973;
    - (c) any trust under the control of any body mentioned in paragraph (a) or (b) above;
    - (d) a development corporation established by an order made, or having effect as if made, under section 2 of the <sup>M24</sup>New Towns (Scotland) Act 1968;
    - (e) the Scottish Special Housing Association;
  - “statutory tenancy”—
    - (a) in relation to England and Wales, has the same meaning as in the <sup>M25</sup>Housing Act 1985;
    - (b) in relation to Scotland, has the same meaning as in the <sup>M26</sup>Rent (Scotland) Act 1984.



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#### Textual Amendments

- F48** S. 24(5)(a)(c) repealed (1.10.1996) by 1996 c. 52, s. 227, **Sch. 19 Pt. I**; S.I. 1996/2402, **art. 3**
- F49** S. 24(5)(b) repealed by **Housing Act 1988 (c. 50, SIF 61)**, s. 140(2), **Sch. 18**
- F50** S. 24(6): words in definition of “local authority” substituted (S.) (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 156(5)(a)**; S.I. 1996/323, **art. 4(1)(b)(c)**
- F51** S. 24(6): words in definition of “local housing authority” substituted (S.) (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 156(5)(b)**; S.I. 1996/323, **art. 4(1)(b)(c)**

#### Marginal Citations

- M17** 1985 c. 68.
- M18** 1987 c. 26.
- M19** 1985 c. 69.
- M20** 1985 c. 68.
- M21** 1985 c. 70.
- M22** 1984 c. 58.
- M23** 1973 c. 65.
- M24** 1968 c. 16.
- M25** 1985 c. 68.
- M26** 1984 c. 58.

## 25 Consent required for provision of financial assistance etc.

- (1) Subject to the following provisions of this section, a local authority shall neither—
- (a) exercise the power conferred by section 24 above; nor
  - (b) so exercise any other power [<sup>F52</sup>(whether conferred before or after the passing of this Act)] as to provide any person, for the purposes of or in connection with the matters mentioned in subsection (1) of that section, with any financial assistance or with any gratuitous benefit,
- except under and in accordance with a consent given by the Secretary of State.
- (2) Nothing in this section shall require the consent of the Secretary of State to a person’s being provided by any local authority with any assistance or benefit if—
- (a) an obligation to provide that person with that particular assistance or benefit—
    - (i) is imposed on the authority by or under any enactment; or
    - (ii) not being an obligation arising as the result of the exercise on or after 6th February 1987 of any option conferred on the authority, has arisen by virtue of an agreement entered into by them before that date;
  - [<sup>F53</sup>(b) the assistance or benefit is provided in consequence of, or in connection with, the making by the authority, or by persons who include the authority, of a requirement under [<sup>F54</sup>section 41 or 98 of the Water Industry Act 1991] for the provision of a water main or public sewer;]
  - (c) the assistance or benefit is provided under section 28A(9)(b) of the <sup>M27</sup>National Health <sup>M28</sup>Service Act 1977 or section 16A(3)(b) of the National Health Service (Scotland) Act 1978 (power to make payments to voluntary organisations out of sums received from health authorities);
  - (d) the assistance or benefit is provided in exercise of any power the expenses of exercising which are recoverable under Schedule 10 to the <sup>M29</sup>Housing Act 1985 or Schedule 9 to the <sup>M30</sup>Housing (Scotland) Act 1987 (recovery of

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- expenses of carrying out works required to be carried out by a repair notice, . . .<sup>F55</sup> or a notice relating to a house in multiple occupation);
- (e) the assistance or benefit is provided in consequence of, or in connection with, the service . . .<sup>F56</sup> of an improvement order under Part IV of the said Act of 1987, . . .<sup>F56</sup>; or
- (f) the assistance or benefit is provided in exercise of any power conferred by—
- (i) section 273 of the said Act of 1985 (power to cleanse premises of vermin before demolition);
  - (ii) sections 379 to 394 of the said Act of 1985 or sections 178 to 190 of the said Act of 1987 (powers exercisable pursuant to the making of a control order); or
  - (iii) Parts XIV to XVI of the said Act of 1985 or Parts XII to XIV of the said Act of 1987 (loans and grants for, and assistance with, the acquisition, improvement, repair and conversion of housing).
- (3) Any transaction entered into in contravention of this section shall be void.
- (4) Subject to subsections (3) and (4) of section 26 below, where at any time on or after 6th February 1987 and before the passing of this Act a local authority in England and Wales has done anything which would have been a contravention of this section if it had been in force at that time, the same consequences shall follow as if this section had been in force at that time.
- (5) For the purposes of this section a local authority provide a person with a gratuitous benefit if—
- (a) they provide that person, or agree to provide that person, with a benefit consisting in the disposal to any person of any land or other property, in the provision to any person of any goods, services or facilities, in the carrying out for any person of any works or in the making to any person of any payment; and
  - (b) that benefit is or is to be provided either for no consideration or for a consideration which has a value in money or money's worth which is significantly less than the value, in money or money's worth, of the benefit which is or is to be provided by the authority.
- (6) In determining for the purposes of subsection (5) above whether any benefit is or is to be provided by a local authority for no consideration, and in determining for those purposes the value of any consideration, there shall be disregarded—
- (a) so much (if any) of the consideration for the benefit in question as consists—
    - (i) in the acquisition by any person of any such property as is mentioned in section 24(1) above or in a promise that any such property will be acquired by any person;
    - (ii) in the carrying out of any works by any person for the purposes of the construction, conversion, rehabilitation, improvement or maintenance of any such property or in a promise that any works will be carried out by any person for any such purposes;
    - (iii) in the carrying out by any person of any acts of management in relation to any such property or in a promise that any acts of management will be carried out by any person in relation to any such property; or
    - (iv) in the grant of a right to nominate persons to be occupiers of any such property or in a promise to grant any such right;

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and

- (b) without prejudice to paragraph (a) above, so much of any transaction entered into after the passing of this Act otherwise than in pursuance of another transaction entered into before that time as provides, in relation to any property which is or is intended to be occupied as housing accommodation, for an obligation which—
- (i) restricts the occupation of the property as housing accommodation, or
  - (ii) (whether because it relates to a matter affecting the suitability of the property for particular purposes or otherwise) has the effect of restricting its occupation as housing accommodation,
- to occupation by persons of a particular description or to occupation by virtue of an interest or agreement of a particular description.

- (7) In the application of this section to Scotland the references in subsection (2)(a)(ii) above to 6th February 1987 shall have effect as references to the date on which this Act is passed.

#### Textual Amendments

- F52** Words inserted by [Local Government and Housing Act 1989 \(c. 42, SIF 81:1\)](#), s. 194(1), **Sch. 11 para. 96**
- F53** [S. 25\(2\)\(b\)](#) substituted by [Water Act 1989 \(c. 15, SIF 130\)](#), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), [Sch. 25 para. 79\(2\)](#), [Sch. 26 paras. 3\(1\)\(2\), 17, 40\(4\), 57\(6\)](#), **58**
- F54** Words in [s. 25\(2\)\(b\)](#) substituted (E.W.) (1.12.1991) by [Water Consolidation \(Consequential Provisions\) Act 1991 \(c. 60, SIF 130\)](#), ss. 2(1), 4(2), **Sch. 1 para. 48**
- F55** Words repealed by [Local Government and Housing Act 1989 \(c. 42, SIF 81:1, 2\)](#), s. 194(4), **Sch. 12 Pt. II**
- F56** Words repealed by [Local Government and Housing Act 1989 \(c. 42, SIF 81:1, 2\)](#), s. 194(4), **Sch. 12 Pt. II**

#### Modifications etc. (not altering text)

- C62** [S. 25](#) excluded (11.9.1996 for specified purposes and otherwise 16.12.1997) by [1996 c. 53, s. 132\(7\)](#); [S.I. 1996/2352, art. 2\(2\)](#); [S.I. 1997/2846, art. 2](#)

#### Marginal Citations

- M27** [1977 c. 49](#).
- M28** [1978 c. 29](#).
- M29** [1985 c. 68](#).
- M30** [1987 c. 26](#).

## 26 Consents under section 25.

- (1) A consent given for the purposes of section 25 above—
- (a) may be given either unconditionally or subject to conditions;
  - (b) may be given in relation to a particular case or in relation to such description of cases (including cases described by reference to a particular local authority or a particular manner of providing assistance or benefits) as may be specified in the consent; and
  - (c) except in relation to anything already done or agreed to be done on the authority of the consent, may be varied or revoked by a notice given or

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published by the Secretary of State in such manner as he may consider appropriate.

(2) In determining whether to give a consent for the purposes of section 25 above in relation to any assistance or benefit or whether to vary or revoke a consent so given, and in determining to what (if any) conditions such a consent should be subject, the Secretary of State—

- (a) shall take into account the extent (if any) to which, and the circumstances in which, it is appropriate, in his opinion, that a local authority should bear the financial burden and risks of acquiring, constructing, converting, rehabilitating, improving, maintaining or managing any of the property in relation to which assistance or benefits might be provided by virtue of the consent; and
- (b) may take into account any other matter whatever which he considers relevant.

(3) Where before the passing of this Act any statement has been made by or on behalf of the Secretary of State—

- (a) that, if an enactment were in force requiring his consent to a person's being provided by a local authority with assistance or benefits of any description, he would give his consent for the purposes of that enactment in relation to any matter or would so give his consent subject to certain conditions; and
- (b) that, if any such enactment is passed, his statement is to be treated as a consent for the purposes of that enactment,

that statement shall have effect, both for the purposes of subsection (4) of section 25 above and after the passing of this Act, as if it were a consent given for the purposes of that section on the conditions (if any) specified in the statement.

(4) Where a consent given for the purposes of section 25 above or a statement such as is mentioned in subsection (3) above relates, in whole or in part, to any assistance or benefits provided before the consent was given or the statement made, that consent or statement shall have effect for the purposes of this section and that section—

- (a) as if the consent had been given, or the statement made, before the assistance or benefits were provided; and
- (b) in the case of a consent relating to any assistance or benefits provided before the passing of this Act, as if the consent had been such a statement;

but a consent or statement having effect in accordance with this subsection shall not affect any interest deriving from, or impose any liability in respect of, any disposal of property which was made before the giving of the consent or the making of the statement and was made by a person who, apart from paragraphs (a) and (b) above, had power to make it by virtue of section 25(3) or (4) above.

(5) Where a consent to a disposal of land by a local authority has been given for the purposes of section 25 above or any such statement as is mentioned in subsection (3) above has effect as such a consent [<sup>F57</sup>then, if the consent given for the purposes of section 25 above so provides], no further consent of the Secretary of State to that disposal shall (if the disposal is after the passing of this Act) be required by virtue of—

- (a) section 26(4) of the <sup>M31</sup>Town and Country Planning Act 1959 or section 74(2) of the <sup>M32</sup>Local Government (Scotland) Act 1973 (disposal of land for less than the best price etc.);
- (b) section 123(2) of the <sup>M33</sup>Local Government Act 1972 (disposal of land by certain local authorities); or

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- (c) section 32(2) or 43(1) of the <sup>M34</sup>Housing Act 1985 or section 12 of the <sup>M35</sup>Housing (Scotland) Act 1987 (disposal of land held for housing purposes and of certain other land).
- (6) Subsection (3) above and, in so far as they relate to a statement such as is mentioned in that subsection, subsections (4) and (5) above shall not extend to Scotland.

#### Textual Amendments

**F57** Words inserted by [Housing Act 1988 \(c. 50, SIF 61\), s. 132\(7\)](#)

#### Marginal Citations

**M31** 1959 c. 53.  
**M32** 1973 c. 65.  
**M33** 1972 c. 70.  
**M34** 1985 c. 68.  
**M35** 1987 c. 26.

## PART IV

### MISCELLANEOUS AND GENERAL

#### *Miscellaneous*

#### 27 Local authority publicity.

- (1) In section 2 of the <sup>M36</sup>Local Government Act 1986 (prohibition of political publicity by local authorities), for subsection (2) (matters to be considered in determining whether material prohibited) there shall be substituted—
- “(2) In determining whether material falls within the prohibition regard shall be had to the content and style of the material, the time and other circumstances of publication and the likely effect on those to whom it is directed and, in particular, to the following matters—
- (a) whether the material refers to a political party or to persons identified with a political party or promotes or opposes a point of view on a question of political controversy which is identifiable as the view of one political party and not of another;
  - (b) where the material is part of a campaign, the effect which the campaign appears to be designed to achieve.”
- (2) In section 4 of that Act (issue by Secretary of State of codes of recommended practice on publicity), in subsection (1) for the words from “for the guidance” to the end there shall be substituted “; and local authorities shall have regard to the provisions of any such code in coming to any decision on publicity.”
- (3) This section shall come into force at the end of the period of two months beginning with the day on which this Act is passed.

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**Marginal Citations**

M36 1986 c. 10.

**28 Prohibition on promoting homosexuality by teaching or by publishing material.**

- (1) The following section shall be inserted after section 2 of the <sup>M37</sup>Local Government Act 1986 (prohibition of political publicity)—

**“2A Prohibition on promoting homosexuality by teaching or by publishing material.**

- (1) A local authority shall not—
- (a) intentionally promote homosexuality or publish material with the intention of promoting homosexuality;
  - (b) promote the teaching in any maintained school of the acceptability of homosexuality as a pretended family relationship.
- (2) Nothing in subsection (1) above shall be taken to prohibit the doing of anything for the purpose of treating or preventing the spread of disease.
- (3) In any proceedings in connection with the application of this section a court shall draw such inferences as to the intention of the local authority as may reasonably be drawn from the evidence before it.
- (4) In subsection (1)(b) above “maintained school” means,—
- (a) in England and Wales, a county school, voluntary school, nursery school or special school, within the meaning of the Education Act 1944; and
  - (b) in Scotland, a public school, nursery school or special school, within the meaning of the Education (Scotland) Act 1980.”
- (2) This section shall come into force at the end of the period of two months beginning with the day on which this Act is passed.

**Marginal Citations**

M37 1986 c. 10.

**29 Local government administration.**

- (1) Schedule 3 to this Act (which relates to local government administration) shall have effect.
- (2) That Schedule shall come into force at the end of the period of two months beginning with the day on which this Act is passed.
- (3) In that Schedule, paragraphs 1 to 10 extend to England and Wales only and paragraphs 11 to 17 extend to Scotland only.

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<sup>F58</sup>30 .....

**Textual Amendments**

**F58** S. 30 repealed (E.W.) (11.9.1998) by 1998 c. 18, ss. 54(3), 55(2), **Sch. 5**

**31 Land held by public bodies.**

- (1) Schedule 5 to this Act (which relates to land held by public bodies) shall have effect.
- (2) Subject to subsection (3) below, that Schedule shall come into force at the end of the period of 2 months beginning with the day on which this Act is passed.
- (3) Paragraph 2 of that Schedule shall come into force on such day as the Secretary of State may appoint by order made by statutory instrument.
- (4) This section and that Schedule extend to England and Wales only.

[<sup>F59</sup>32 **Direct labour organisations.**

- (1) Schedule 6 to this Act (which relates to direct labour organisations) shall have effect.
- (2) Subject to subsection (3) below, that Schedule shall come into force on such day as the Secretary of State may appoint by order made by statutory instrument; and different days may be appointed for different provisions or different purposes.
- (3) Paragraphs 8(1) and (3) and 11 of that Schedule shall come into force on the day on which this Act is passed.
- (4) An order under this section may include such supplementary, incidental, consequential or transitional provisions as appear to the Secretary of State to be necessary or expedient.
- (5) Paragraph 11 of that Schedule extends to Scotland only.]

**Textual Amendments**

**F59** S. 32 repealed (E.W.) (27.7.1999 with effect in accordance with ss. 21, 27 of the amending Act) by 1999 c. 27, ss. 21(1)(c), 34, **Sch. 2(1)**, Note

**Modifications etc. (not altering text)**

**C63** Power of appointment conferred by s. 32(2)(4) fully exercised: **S.I. 1988/979**, 1043

**33 Local authority companies.**

- (1) A local authority or relevant public body shall not enter into a contract under which a company which is associated with the authority or body is to carry out work falling within a defined activity, unless, before entering into that contract, the authority or body has taken reasonable steps for the purpose of securing competition for the carrying out of that work.
- (2) For the purpose of this section a company is associated with a local authority or relevant public body if, by virtue of any decision of the authority or body (including

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that of any committee or sub-committee thereof in the course of discharging any function conferred upon them by virtue of section 101 of the <sup>M38</sup>Local Government Act 1972, or, in relation to Scotland, section 56 of the <sup>M39</sup>Local Government (Scotland) Act 1973)—

- (a) the authority or body, or
- (b) any member or officer of the authority or body, or
- (c) any nominee of the authority or body,

is a member either of the company or of another company which, in accordance with section 736 of the <sup>M40</sup>Companies Act 1985, is the company's subsidiary or holding company.

[<sup>F60</sup>(2A) In relation to England and Wales, a company is also associated with a local authority, or relevant public body, to which Part V of the Local Government and Housing Act 1989 applies (companies in which local authorities have interests) if the company is under the control or subject to the influence of the authority or body within the meaning of that Part or the authority or body has a minority interest in the company.]

(3) In this section—

- (a) “defined activity” has the meaning assigned by section 2 above;
- (b) “local authority” has the meaning assigned by subsection (2) or, as the case may be, subsection (3) of section 1 above; and
- (c) “relevant public body” means any authority or committee falling within [<sup>F61</sup>paragraph (aa) or]paragraphs (e) to (j) of subsection (1) of section 1 above.

(4) This section (and, so far as is relevant for the purposes of the definitions in subsection (3) above, sections 1 and 2 above) shall be deemed to have come into force on 11th February 1988 and, accordingly, has effect in relation to contracts entered into on or after that day.

#### Textual Amendments

**F60** S. 33(2A) inserted (*prosp.*) by Local Government and Housing Act 1989 (c. 42, SIF 81:1, 2), ss. 194(1), 195(2), **Sch. 11 para. 97**

**F61** S. 33(3)(c): words in definition of “relevant public body” inserted (19.9.1995) by 1995 c. 25, ss. 65(7), 125, **Sch. 8 para. 8(5)** (with ss. 7(6), 115, 117)

#### Marginal Citations

**M38** 1972 c. 70.

**M39** 1973 c. 65.

**M40** 1985 c. 6.

### 34 Arrangements under Employment and Training Act 1973.

(1) In section 45(2) of the <sup>M41</sup>Local Government (Miscellaneous Provisions) Act 1982 (local authorities having power to enter into arrangements under <sup>M42</sup>Employment and Training Act 1973) after paragraph (a) there shall be inserted—

- “(aa) an authority established by Part III or IV of the Local Government Act 1985 or by an order under section 10 of that Act;
- (ab) a body corporate established by an order under section 67 of that Act.”



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- (2) This section shall be deemed to have come into force, as regards any authority or body concerned, on the day the authority or body was established.
- (3) This section extends to England and Wales only.

#### **Marginal Citations**

**M41** 1982 c. 30.

**M42** 1973 c. 50.

### **35 Amendment of Local Government (Scotland) Act 1973.**

- (1) The <sup>M43</sup>Local Government (Scotland) Act 1973 shall be amended in accordance with the provisions of this section.
- (2) In section 97 (establishment of Commission for Local Authority Accounts in Scotland), in subsection (2) the word “and” after paragraph (c) shall be omitted and at the end there shall be added “and
  - (e) functions conferred by sections 97A and 97B of this Act.”
- (3) After section 97 there shall be inserted the following sections—

#### **“97A Studies for improving economy etc. in services.**

- (1) The Commission shall undertake or promote comparative and other studies designed to enable it to make recommendations for improving economy, efficiency and effectiveness in the provision of services by local authorities or by other bodies whose accounts are required to be audited in accordance with this Part of this Act, and for improving the financial or other management of such authorities or other bodies.
- (2) The Commission shall publish or otherwise make available its recommendations and the results of any studies undertaken or promoted under this section.
- (3) Before undertaking or promoting any study under this section the Commission shall consult such associations of local authorities or other bodies whose accounts are required to be audited in accordance with this Part of this Act as appear to it to be concerned and such associations of employees as appear to it to be appropriate.

#### **97B Furnishing of information and documents to Commission.**

- (1) Without prejudice to any other provision of this Part of this Act, the Commission may require any body whose accounts are required to be audited in accordance with this Part of this Act, and any officer or member of any such body, to furnish the Commission or any person authorised by it with all such information as the Commission or that person may reasonably require for the discharge of the functions under this Part of this Act of the Commission or of that person, including the carrying out of any study under section 97A of this Act.

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- (2) Any person who without reasonable excuse fails to comply with a requirement imposed by subsection (1) above shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.”
- (4) In section 99 (general duties of auditors) after paragraph (b) there shall be added—
  - “(c) that the local authority has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources.”
- (5) This section shall come into force at the end of the period of two months beginning with the day on which this Act is passed.
- (6) This section extends to Scotland only.

**Marginal Citations**

M43 1973 c. 65.

F62 **36** .....

**Textual Amendments**

F62 S. 36 repealed (5.11.1993) by 1993 c. 50, s. 1(1), Sch. 1 Pt. II

**37 Dog registration scheme.**

- (1) The Secretary of State may by regulations make provision for the establishment and administration of a dog registration scheme by local authorities, or such other organisations as he may, after consulting with them, designate.
- (2) Regulations made under this section shall be exercisable by statutory instrument.

**38 Abolition of duty on dog licences.**

- (1) The duty charged under the <sup>M44</sup>Dog Licences Act 1959 on licences for dogs is hereby abolished.
- (2) In section 1 of the <sup>M45</sup>Protection of Animals (Cruelty to Dogs) Act 1933 (disqualification for keeping a dog of any person convicted of cruelty to dogs), at the end there shall be inserted the following subsection—
  - “(5) For the purposes of this section a person shall be presumed, until the contrary is shown, to keep a dog—
    - (a) if it is found or seen in that person’s custody, charge or possession, or in his house or premises;
    - (b) in the case of hounds, if he is their owner or master.”
- (3) In section 1 of the <sup>M46</sup>Protection of Animals (Cruelty to Dogs) (Scotland) Act 1934 (disqualification for keeping a dog of any person convicted of cruelty to dogs), at the end there shall be inserted the following subsection—

*Status: Point in time view as at 08/05/2000.*

*Changes to legislation: Local Government Act 1988 is up to date with all changes known to be in force on or before 22 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- “(5) For the purposes of this section a person shall be presumed, until the contrary is shown, to keep a dog—
  - (a) if it is found or seen in that person’s custody, charge or possession, or in his house or premises;
  - (b) in the case of hounds, if he is their owner or master.”

- (4) This section shall come into force at the end of the period of two months beginning with the day on which this Act is passed.

**Marginal Citations**

**M44** 1959 c. 55.  
**M45** 1933 c. 17.  
**M46** 1934 c. 25.

**39 Control of stray dogs.**

- (1) The <sup>M47</sup>Dogs Act 1906 shall be amended in accordance with the provisions of this section.

<sup>F63</sup>(2) .....

- (3) Section 3 shall be amended as follows for the purpose of extending the powers of seizure and detention of stray dogs to those found on land or premises other than highways or places of public resort—
  - (a) in subsection (1), after the word “resort” there shall be inserted the words “or on any other land or premises”; and
  - (b) after subsection (1) there shall be inserted the following subsection—

“(1A) The powers under subsection (1) of this section shall not be exercised in relation to a dog found on any land or premises other than a highway or place of public resort unless the owner or occupier of the land or premises has consented to such exercise.”

<sup>F63</sup>(4) .....

- (5) Any enactment in any local Act which amends section 3 or confers powers on a local authority (within the meaning of that section) in relation to that section as it applies to the area of the local authority shall cease to have effect.
- (6) This section shall come into force at the end of the period of two months beginning on the day on which this Act is passed.
- (7) This section extends to England and Wales only.

**Textual Amendments**

**F63** S. 39(2)(4) repealed (1.4.1992) by [Environmental Protection Act 1990 \(c. 43, SIF 46:4\)](#), s. 162(2), [Sch. 16 Pt. IX](#); S.I. 1992/266, [art.3](#)

**Marginal Citations**

**M47** 1906 c. 32.

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### *General*

#### **40 Finance.**

There shall be paid out of money provided by Parliament—

- (a) any expenses of the Secretary of State incurred in consequence of this Act;
- (b) any increase attributable to this Act in the sums payable out of money so provided under any other enactment.

#### **41 Repeals.**

The enactments mentioned in Schedule 7 to this Act are repealed to the extent specified in column 3, but subject to any provision at the end of any Part of that Schedule.

#### **42 Citation and extent.**

- (1) This Act may be cited as the Local Government Act 1988.
- (2) This Act does not extend to Northern Ireland.

**Status:**

Point in time view as at 08/05/2000.

**Changes to legislation:**

Local Government Act 1988 is up to date with all changes known to be in force on or before 22 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.