



# Local Government Act 1988

## 1988 CHAPTER 9

### PART II

#### PUBLIC SUPPLY OR WORKS CONTRACTS

#### **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.
- (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

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- (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) <sup>F1</sup>use or non-use by contractors of technical or professional services provided by the authority under the <sup>M1</sup>Building Act 1984 or the <sup>M2</sup>Building (Scotland) Act [<sup>F2</sup>2003 (asp 8)] .]
- (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 [<sup>F3</sup>the Companies Acts (see section 1159 of the

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Companies Act 2006)] ) 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>F4</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;

“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>F5</sup>Trade Union and Labour Relations (Consolidation) Act 1992].

<sup>F6</sup>(9) .....

[<sup>F7</sup>(10) This section does not prevent a public authority to which it applies from exercising any function regulated by this section with reference to a non-commercial matter to the extent that the authority considers it necessary or expedient to do so to enable or facilitate compliance with—

- (a) the duty imposed on it by section 149 of the Equality Act 2010 (public sector equality duty), or

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- (b) any duty imposed on it by regulations under section 153 or 154 of that Act (powers to impose specific duties).]

#### Textual Amendments

- F1** S. 17(5)(h) ceases to have effect in part (S.) (1.4.2003) by virtue of [Local Government in Scotland Act 2003 \(asp 1\)](#), [ss. 7\(3\)](#), [62\(2\)](#); [S.S.I. 2003/134](#), [art. 2\(1\)](#), [sch.](#)
- F2** Words in s. 17(5)(h) substituted (S.) (1.5.2005) by [Building \(Scotland\) Act 2003 \(asp 8\)](#), [s. 59\(1\)](#), [sch. 6 para. 19](#) (with [s. 53](#)); [S.S.I. 2004/404](#), [art. 2\(1\)](#)
- F3** Words in s. 17(8) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), [art. 1\(2\)](#), [Sch. 1 para. 93](#) (with [art. 10](#))
- F4** 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\(a\)](#)
- F5** 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\(b\)](#)
- F6** S. 17(9) repealed (5.4.2011) by [Equality Act 2010 \(c. 15\)](#), [s. 216\(3\)](#), [Sch. 26 para. 10\(a\)](#), [Sch. 27 Pt. 1](#) (with [ss. 6\(4\)](#), [205](#)); [S.I. 2011/1066](#), [art. 2\(g\)\(i\)](#)
- F7** S. 17(10) inserted (5.4.2011) by [Equality Act 2010 \(c. 15\)](#), [s. 216\(3\)](#), [Sch. 26 para. 10\(b\)](#) (with [ss. 6\(4\)](#), [205](#)); [S.I. 2011/1066](#), [art. 2\(g\)\(i\)](#)

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

- C1** 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](#)
- C2** S. 17 extended (1.4.1995) by [S.I. 1995/401](#), [art. 18](#), [Sch. para. 12](#)
- C3** 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](#)
- C4** S. 17(5)(a) excluded (S.) (1.4.2003) by [Local Government in Scotland Act 2003 \(asp 1\)](#), [s. 7\(1\)\(2\)62\(2\)](#); [S.S.I. 2003/134](#), [art. 2\(1\)](#), [sch.](#)
- C5** S. 17(5)(b) excluded (S.) (1.4.2003) by [Local Government in Scotland Act 2003 \(asp 1\)](#), [s. 7\(1\)\(2\)62\(2\)](#); [S.S.I. 2003/134](#), [art. 2\(1\)](#), [sch.](#)
- C6** S. 17(5)(d) excluded (S.) (1.4.2003) by [Local Government in Scotland Act 2003 \(asp 1\)](#), [s. 7\(1\)\(2\)62\(2\)](#); [S.S.I. 2003/134](#), [art. 2\(1\)](#), [sch.](#)

#### Marginal Citations

- M1** 1984 c. 55.
- M2** 1959 c. 24.

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