



# Local Government and Housing Act 1989

## 1989 CHAPTER 42

### PART I

#### LOCAL AUTHORITY MEMBERS, OFFICERS, STAFF AND COMMITTEES ETC.

##### *Political restriction of officers and staff*

#### **1 Disqualification and political restriction of certain officers and staff**

- (1) A person shall be disqualified from becoming (whether by election or otherwise) or remaining a member of a local authority if he holds a politically restricted post under that local authority or any other local authority in Great Britain.
- (2) In the House of Commons Disqualification Act 1975, in Part III of Schedule 1 (other disqualifying offices) there shall be inserted at the appropriate place—

“Person holding a politically restricted post, within the meaning of Part I of the Local Government and Housing Act 1989, under a local authority, within the meaning of that Part.”
- (3) In section 80 of the Local Government Act 1972 (disqualification for election and holding office as member of local authority)—
  - (a) in subsection (1)(a) (paid office holders and employees), the words “joint board, joint authority or” shall be omitted; and
  - (b) in subsection (6) (extension of meaning of “local authority”), after the word “includes” there shall be inserted “a joint board and”.
- (4) In section 31 of the Local Government (Scotland) Act 1973 (which makes corresponding provision for Scotland)—
  - (a) in subsection (1)(a)(ii), the words “or joint board” shall be omitted; and
  - (b) after subsection (1) there shall be inserted the following subsection—

“(1A) A person is disqualified for being a member of a joint board if he or a partner of his holds any paid office or employment (other than the

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office of chairman or vice-chairman of the board) or other place of profit in the gift or disposal of the board.”

- (5) The terms of appointment or conditions of employment of every person holding a politically restricted post under a local authority (including persons appointed to such posts before the coming into force of this section) shall be deemed to incorporate such requirements for restricting his political activities as may be prescribed for the purposes of this subsection by regulations made by the Secretary of State.
- (6) Regulations under subsection (5) above may contain such incidental provision and such supplemental, consequential and transitional provision in connection with their other provisions as the Secretary of State considers appropriate and, without prejudice to section 190(1) below, may contain such exceptions for persons appointed in pursuance of section 9 below as he thinks fit.
- (7) So far as it has effect in relation to disqualification for election, this section has effect with respect to any election occurring not less than two months after the coming into force of this section and, so far as it relates to becoming in any other way a member of a local authority, this section has effect with respect to any action which, apart from this section, would result in a person becoming a member of the authority not less than two months after the coming into force of this section.
- (8) If, immediately before the expiry of the period of two months referred to in subsection (7) above, a person who is a member of a local authority holds a politically restricted post under that or any other local authority, nothing in this section shall apply to him until the expiry of the period for which he was elected or for which he otherwise became a member of the authority.

## **2 Politically restricted posts**

- (1) The following persons are to be regarded for the purposes of this Part as holding politically restricted posts under a local authority—
  - (a) the person designated under section 4 below as the head of the authority’s paid service;
  - (b) the statutory chief officers;
  - (c) a non-statutory chief officer;
  - (d) a deputy chief officer;
  - (e) the monitoring officer designated under section 5 below;
  - (f) any person holding a post to which he was appointed in pursuance of section 9 below; and
  - (g) any person not falling within paragraphs (a) to (f) above whose post is for the time being specified by the authority in a list maintained in accordance with subsection (2) below and any directions under section 3 below or with section 100G(2) of the Local Government Act 1972 or section 50G(2) of the Local Government (Scotland) Act 1973 (list of officers to whom powers are delegated).
- (2) It shall be the duty of every local authority to prepare and maintain a list of such of the following posts under the authority, namely—
  - (a) the full time posts the annual rate of remuneration in respect of which is or exceeds £19,500 or such higher amount as may be specified in or determined under regulations made by the Secretary of State;

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- (b) the part time posts the annual rate of remuneration in respect of which would be or exceed that amount if they were full time posts in respect of which remuneration were paid at the same rate as for the part time post; and
  - (c) posts not falling within paragraph (a) or (b) above the duties of which appear to the authority to fall within subsection (3) below,

as are not posts for the time being exempted under section 3 below, posts for the time being listed under section 100G(2) of the Local Government Act 1972 or section 50G(2) of the Local Government (Scotland) Act 1973 or posts of a description specified in regulations made by the Secretary of State for the purposes of this subsection.
- (3) The duties of a post under a local authority fall within this subsection if they consist in or involve one or both of the following, that is to say—
  - (a) giving advice on a regular basis to the authority themselves, to any committee or sub-committee of the authority or to any joint committee on which the authority are represented;
  - (b) speaking on behalf of the authority on a regular basis to journalists or broadcasters.
- (4) It shall be the duty of every local authority to deposit the first list prepared under subsection (2) above with their proper officer before the expiry of the period of two months beginning with the coming into force of this section; and it shall also be their duty, on subsequently making any modifications of that list, to deposit a revised list with that officer.
- (5) It shall be the duty of every local authority in performing their duties under this section to have regard to such general advice as may be given by virtue of subsection (1)(b) of section 3 below by a person appointed under that subsection.
- (6) In this section “the statutory chief officers” means—
  - (a) the chief education officer or director of education appointed under section 88 of the Education Act 1944 or section 78 of the Education (Scotland) Act 1980;
  - (b) the chief officer of a fire brigade maintained under the Fire Services Act 1947 and appointed under regulations made under section 18(1)(a) of that Act;
  - (c) the director of social services or director of social work appointed under section 6 of the Local Authority Social Services Act 1970 or section 3 of the Social Work (Scotland) Act 1968; and
  - (d) the officer having responsibility, for the purposes of section 151 of the Local Government Act 1972, section 73 of the Local Government Act 1985, section 112 of the Local Government Finance Act 1988 or section 6 below or for the purposes of section 95 of the Local Government (Scotland) Act 1973, for the administration of the authority’s financial affairs.
- (7) In this section “non-statutory chief officer” means, subject to the following provisions of this section—
  - (a) a person for whom the head of the authority’s paid service is directly responsible;
  - (b) a person who, as respects all or most of the duties of his post, is required to report directly or is directly accountable to the head of the authority’s paid service; and

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- (c) any person who, as respects all or most of the duties of his post, is required to report directly or is directly accountable to the local authority themselves or any committee or sub-committee of the authority.
- (8) In this section “deputy chief officer” means, subject to the following provisions of this section, a person who, as respects all or most of the duties of his post, is required to report directly or is directly accountable to one or more of the statutory or non-statutory chief officers.
- (9) A person whose duties are solely secretarial or clerical or are otherwise in the nature of support services shall not be regarded as a non-statutory chief officer or a deputy chief officer for the purposes of this Part.
- (10) Nothing in this section shall have the effect of requiring any person to be regarded as holding a politically restricted post by reason of his holding—
  - (a) the post of head teacher or principal of a school, college or other educational institution or establishment which, in England and Wales, is maintained or assisted by a local education authority or, in Scotland, is under the management of or is assisted by an education authority; or
  - (b) any other post as a teacher or lecturer in any such school, college, institution or establishment,
 or of requiring any such post to be included in any list prepared and maintained under this section.
- (11) Regulations under this section may contain such incidental provision and such supplemental, consequential and transitional provision in connection with their other provisions as the Secretary of State considers appropriate.

### **3 Grant and supervision of exemptions from political restriction**

- (1) It shall be the duty of the Secretary of State to appoint a person—
  - (a) to carry out the functions in relation to political restriction which are conferred by subsections (2) to (7) below; and
  - (b) to give such general advice with respect to the determination of questions arising by virtue of section 2(3) above as that person considers appropriate after consulting such representatives of local government and such organisations appearing to him to represent employees in local government as he considers appropriate.
- (2) A person appointed under subsection (1) above—
  - (a) shall consider any application for exemption from political restriction which is made to him, in respect of any post under a local authority, by the holder for the time being of that post; and
  - (b) may, on the application of any person or otherwise, give directions to a local authority requiring it to include a post in the list maintained by the authority under section 2(2) above.
- (3) An application shall not be made by virtue of subsection (2)(a) above in respect of a post under a local authority except where—
  - (a) the authority have specified or are proposing to specify the post in the list maintained by the authority under subsection (2) of section 2 above; and

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- (b) in the case of a post falling within paragraph (a) or (b) of that subsection, the authority have certified whether or not, in their opinion, the duties of the post fall within subsection (3) of that section;

and it shall be the duty of a local authority to give a certificate for the purposes of paragraph (b) above in relation to any post if they are requested to do so by the holder of that post.
- (4) If, on an application made by virtue of subsection (2)(a) above in respect of any post under a local authority, the person to whom the application is made is satisfied that the duties of the post do not fall within section 2(3) above, that person shall direct—
  - (a) that, for so long as the direction has effect in accordance with its terms, the post is not to be regarded as a politically restricted post; and
  - (b) that, accordingly, the post is not to be specified in the list maintained by that authority under section 2(2) above or, as the case may be, is to be removed from that list.
- (5) A person appointed under subsection (1) above shall not give a direction under subsection (2)(b) above in respect of any post under a local authority except where he is satisfied that the post—
  - (a) is a post the duties of which fall within section 2(3) above; and
  - (b) is neither included in any list maintained by the authority in accordance with section 2(2) above, section 100G(2) of the Local Government Act 1972 or section 50G(2) of the Local Government (Scotland) Act 1973 nor of a description specified in any regulations under section 2(2) above.
- (6) It shall be the duty of a local authority—
  - (a) to give a person appointed under subsection (1) above all such information as that person may reasonably require for the purpose of carrying out his functions under this section;
  - (b) to comply with any direction under this section with respect to the list maintained by the authority; and
  - (c) on being given a direction by virtue of subsection (2)(b) above, to notify the terms of the direction to the holder for the time being of the post to which the direction relates.
- (7) It shall be the duty of a person appointed under subsection (1) above, in carrying out his functions under this section, to give priority, according to the time available before the election, to any application made by virtue of subsection (2)(a) above by a person who certifies that it is made for the purpose of enabling him to be a candidate in a forthcoming election.
- (8) The Secretary of State may—
  - (a) appoint different persons under subsection (1) above for England and for Wales;
  - (b) provide for the appointment of such numbers of staff to assist any person appointed under that subsection, and to act on that person's behalf, as the Secretary of State may with the consent of the Treasury determine;
  - (c) pay to or in respect of a person appointed under that subsection and members of such a person's staff such remuneration and such other sums by way of, or towards, the payment of pensions, allowances and gratuities as the Secretary of State may so determine; and

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- (d) provide for a person appointed under that subsection and such a person's staff to hold office on such other terms as the Secretary of State may so determine.

### *Duties of particular officers*

## **4 Designation and reports of head of paid service**

- (1) It shall be the duty of every relevant authority—
  - (a) to designate one of their officers as the head of their paid service; and
  - (b) to provide that officer with such staff, accommodation and other resources as are, in his opinion, sufficient to allow his duties under this section to be performed.
- (2) It shall be the duty of the head of a relevant authority's paid service, where he considers it appropriate to do so in respect of any proposals of his with respect to any of the matters specified in subsection (3) below, to prepare a report to the authority setting out his proposals.
- (3) Those matters are—
  - (a) the manner in which the discharge by the authority of their different functions is co-ordinated;
  - (b) the number and grades of staff required by the authority for the discharge of their functions;
  - (c) the organisation of the authority's staff; and
  - (d) the appointment and proper management of the authority's staff.
- (4) It shall be the duty of the head of a relevant authority's paid service, as soon as practicable after he has prepared a report under this section, to arrange for a copy of it to be sent to each member of the authority.
- (5) It shall be the duty of a relevant authority to consider any report under this section by the head of their paid service at a meeting held not more than three months after copies of the report are first sent to members of the authority; and nothing in section 101 of the Local Government Act 1972 or in section 56 of, or Schedule 10 or 20 to, the Local Government (Scotland) Act 1973 (delegation) shall apply to the duty imposed by virtue of this subsection.
- (6) In this section "relevant authority"—
  - (a) in relation to England and Wales, means a local authority of any of the descriptions specified in paragraphs (a) to (e) of section 21(1) below; and
  - (b) in relation to Scotland, means a regional, islands or district council.
- (7) This section shall come into force at the expiry of the period of two months beginning on the day this Act is passed.

## **5 Designation and reports of monitoring officer**

- (1) It shall be the duty of every relevant authority—
  - (a) to designate one of their officers (to be known as "the monitoring officer") as the officer responsible for performing the duties imposed by this section; and
  - (b) to provide that officer with such staff, accommodation and other resources as are, in his opinion, sufficient to allow those duties to be performed;

and the officer so designated may be the head of the authority's paid service but shall not be their chief finance officer.

- (2) It shall be the duty of a relevant authority's monitoring officer, if it at any time appears to him that any proposal, decision or omission by the authority, by any committee, sub-committee or officer of the authority or by any joint committee on which the authority are represented constitutes, has given rise to or is likely to or would give rise to—

- (a) a contravention by the authority, by any committee, sub-committee or officer of the authority or by any such joint committee of any enactment or rule of law or of any code of practice made or approved by or under any enactment; or
- (b) any such maladministration or injustice as is mentioned in Part III of the Local Government Act 1974 (Local Commissioners) or Part II of the Local Government (Scotland) Act 1975 (which makes corresponding provision for Scotland),

to prepare a report to the authority with respect to that proposal, decision or omission.

- (3) It shall be the duty of a relevant authority's monitoring officer—

- (a) in preparing a report under this section to consult so far as practicable with the head of the authority's paid service and with their chief finance officer; and
- (b) as soon as practicable after such a report has been prepared by him or his deputy, to arrange for a copy of it to be sent to each member of the authority.

- (4) The references in subsection (2) above, in relation to a relevant authority in England and Wales, to a committee or sub-committee of the authority and to a joint committee on which they are represented shall be taken to include references to any of the following, that is to say—

- (a) any police committee the members of which include persons appointed by the authority;
- (b) any local fisheries committee the members of which include persons so appointed;
- (c) any National Parks Committee the members of which include persons so appointed; and
- (d) any sub-committee appointed by a committee falling within paragraphs (a) to (c) above;

but in relation to any such committee or sub-committee the reference in subsection (3) (b) above to each member of the authority shall have effect as a reference to each member of the committee or, as the case may be, of the committee which appointed the sub-committee.

- (5) It shall be the duty of a relevant authority and of any such committee as is mentioned in subsection (4) above—

- (a) to consider any report under this section by a monitoring officer or his deputy at a meeting held not more than twenty-one days after copies of the report are first sent to members of the authority or committee; and
- (b) without prejudice to any duty imposed by virtue of section 115 of the Local Government Finance Act 1988 (duties in respect of conduct involving contraventions of financial obligations) or otherwise, to ensure that no step is taken for giving effect to any proposal or decision to which such a report relates at any time while the implementation of the proposal or decision is suspended in consequence of the report;

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and nothing in section 101 of the Local Government Act 1972 or in section 56 of, or Schedule 10 or 20 to, the Local Government (Scotland) Act 1973 (delegation) shall apply to the duty imposed by virtue of paragraph (a) above.

- (6) For the purposes of paragraph (b) of subsection (5) above the implementation of a proposal or decision to which a report under this section relates shall be suspended in consequence of the report until the end of the first business day after the day on which consideration of that report under paragraph (a) of that subsection is concluded.
- (7) The duties of a relevant authority's monitoring officer under this section shall be performed by him personally or, where he is unable to act owing to absence or illness, personally by such member of his staff as he has for the time being nominated as his deputy for the purposes of this section.
- (8) In this section—

“business day”, in relation to a relevant authority, means any day which is not a Saturday or Sunday, Christmas Day, Good Friday or any day which is a bank holiday under the Banking and Financial Dealings Act 1971 in the part of Great Britain where the area of the authority is situated;

“chief finance officer”, in relation to a relevant authority, means the officer having responsibility, for the purposes of section 151 of the Local Government Act 1972, section 73 of the Local Government Act 1985, section 112 of the Local Government Finance Act 1988 or section 6 below or for the purposes of section 95 of the Local Government (Scotland) Act 1973, for the administration of the authority's financial affairs; and

“relevant authority”—

- (a) in relation to England and Wales, means a local authority of any of the descriptions specified in paragraphs (a) to (j) of section 21(1) below; and
- (b) in relation to Scotland, means a local authority.

- (9) This section shall come into force at the expiry of the period of two months beginning on the day this Act is passed.

## **6 Officer responsible for financial administration of certain authorities**

- (1) On and after the commencement day the Common Council shall—
  - (a) make arrangements for the proper administration of such of its financial affairs as relate to it in its capacity as a local authority, police authority or port health authority, and
  - (b) secure that one of its officers has responsibility for the administration of those affairs.
- (2) Section 17 of the City of London Sewers Act 1897 (functions of the chamberlain of the City of London as regards financial affairs) shall cease to have effect on the commencement day.
- (3) On and after the commencement day the person having responsibility for the administration of certain of the financial affairs of the Common Council under subsection (1) above shall—
  - (a) be a member of one or more of the bodies specified in subsection (5) below; or
  - (b) be the person who immediately before that day was the chamberlain of the City of London; or



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- (c) be a person who qualifies by virtue of section 113(2)(b) of the Local Government Finance Act 1988 (existing office holders) as a person who may be given responsibility for the financial affairs of an authority mentioned in section 111(2)(a) to (k) of that Act; or
  - (d) fulfil two or more of those conditions.
- (4) On and after the commencement day the person having responsibility for the administration of the financial affairs of a new successor body under section 73 of the Local Government Act 1985 shall—
  - (a) be a member of one or more of the bodies specified in subsection (5) below; or
  - (b) be the person who immediately before that day had responsibility for the administration of the financial affairs of the body concerned under the said section 73; or
  - (c) be a person who qualifies by virtue of section 113(2)(b) of the Local Government Finance Act 1988 (existing office holders) as a person who may be given responsibility for the financial affairs of an authority mentioned in section 111(2)(a) to (k) of that Act; or
  - (d) fulfil two or more of those conditions.
- (5) The bodies referred to in subsections (3)(a) and (4)(a) above are—
  - (a) the Institute of Chartered Accountants in England and Wales;
  - (b) the Institute of Chartered Accountants of Scotland;
  - (c) the Chartered Association of Certified Accountants;
  - (d) the Chartered Institute of Public Finance and Accountancy;
  - (e) the Institute of Chartered Accountants in Ireland;
  - (f) the Chartered Institute of Management Accountants;
  - (g) any other body of accountants established in the United Kingdom and for the time being approved by the Secretary of State for the purposes of this section.
- (6) The Secretary of State may make regulations containing, as regards the Common Council and any new successor body to which section 73 of the Local Government Act 1985 applies, provisions equivalent to sections 114 to 116 of the Local Government Finance Act 1988 (reports etc.) subject to—
  - (a) modifications to confine the provisions to the Common Council in its capacity as a local authority, police authority or port health authority; and
  - (b) any other modifications the Secretary of State thinks fit;and any such regulations may contain such incidental provision and such supplemental, consequential and transitional provision in connection with their other provisions as the Secretary of State considers appropriate.
- (7) In this section—
  - “the commencement day” means the day on which this section comes into force;
  - “the Common Council” means the Common Council of the City of London;
  - “new successor body” means a body corporate established at any time by an order under section 67(3) of the Local Government Act 1985 (new body succeeding to residuary body’s functions).
- (8) This section shall come into force at the expiry of the period of two months beginning on the day this Act is passed.

*Appointment and management etc. of staff*

**7 All staff to be appointed on merit**

- (1) Every appointment of a person to a paid office or employment under—
  - (a) a local authority or parish or community council in England and Wales, or
  - (b) a local authority in Scotland,
 shall be made on merit.
- (2) Subsection (1) above applies to all appointments made by, or by any committee of, a local authority or parish or community council, whether made under section 112 of the Local Government Act 1972 or section 64 of the Local Government (Scotland) Act 1973 (appointment of staff) or otherwise, but has effect subject to—
  - (a) sections 9 and 12 of the Disabled Persons (Employment) Act 1944 (quotas and reserved employment);
  - (b) section 18 of the Fire Services Act 1947 (regulations as to appointment etc. of chief officers and fire brigades);
  - (c) section 7 of the Sex Discrimination Act 1975 (discrimination permitted in relation to employment where sex of employee is a genuine occupational qualification);
  - (d) section 5 of the Race Relations Act 1976 (discrimination permitted in relation to employment where being of a particular racial group is a genuine occupational qualification); and
  - (e) section 113 of the Local Government Finance Act 1988 and section 6 above (qualifications of officers responsible for administration of financial affairs of certain authorities).
- (3) This section shall come into force at the expiry of the period of two months beginning on the day this Act is passed.

**8 Duty to adopt standing orders with respect to staff**

- (1) The Secretary of State may by regulations require relevant authorities, subject to such variations as may be authorised by the regulations—
  - (a) to incorporate such provision as may be prescribed by the regulations in standing orders relating to their staff; and
  - (b) to make or refrain from making such other modifications of any such standing orders as may be so prescribed.
- (2) For the purposes of this section standing orders relate to the staff of a relevant authority if they make provision for regulating—
  - (a) the appointment of persons to paid office or employment under the authority; or
  - (b) the dismissal of persons holding such office or employment and the taking of other disciplinary action against such persons.
- (3) Without prejudice to the generality of subsection (1) above, regulations under this section may require a relevant authority's standing orders—
  - (a) so to restrict the manner of exercising the power to take steps for or towards the selection of candidates for interview, or for appointment, as to make it exercisable only by the authority themselves, by a committee or sub-committee of the authority or by particular officers of the authority;

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- (b) to restrict the power of the authority or any of their committees or sub-committees—
    - (i) to give directions to persons making appointments on their behalf as to the identity of the individuals to be appointed; or
    - (ii) otherwise to interfere with the making of appointments by such persons;
  - (c) to require the monitoring officer of the authority to prepare a report to the authority in respect of every proposed appointment of a person to a politically restricted post;
  - (d) to require every such report to state whether, in the opinion of the monitoring officer, the proposed appointment can be made—
    - (i) without any contravention of any provision made by or under this Part; and
    - (ii) without any matter being taken into account which could not properly be taken into account;and, if in his opinion it cannot be so made, his reasons; and
  - (e) to prohibit the authority or any committee, sub-committee or other person acting on their behalf from dismissing or taking other disciplinary action against a person holding office or employment under the authority except in accordance with recommendations contained in a report made to the authority by an independent person of such a description as is prescribed by the regulations.
- (4) Regulations under this section may contain such incidental provision and such supplemental, consequential and transitional provision in connection with their other provisions as the Secretary of State considers appropriate; and that provision may include—
- (a) provision which, for the purposes of any such restriction as is mentioned in subsection (3) above, makes modifications of any enactment with respect to the delegation of a relevant authority's functions;
  - (b) provision which (with or without modifications) applies provisions of section 5 above in relation to any report prepared in consequence of regulations made by virtue of subsection (3)(c) above;
  - (c) provision specifying the consequences—
    - (i) in relation to any appointment or contract of employment;
    - (ii) in relation to any proceedings on a complaint to an industrial tribunal; and
    - (iii) in relation to any expenditure incurred by the authority, of any contravention of standing orders made in pursuance of the regulations; and
  - (d) without prejudice to section 190(1) below, special provision in relation to the appointment of persons in pursuance of section 9 below and in relation to the appointment of persons for the purposes of functions exercised by joint committees on which relevant authorities are represented.
- (5) In this section “relevant authority”—
- (a) in relation to England and Wales, means a local authority of any of the descriptions specified in paragraphs (a) to (e) of section 21(1) below; and
  - (b) in relation to Scotland, means a regional, islands or district council.

## 9 Assistants for political groups

- (1) Nothing in section 7(1) above or in any enactment, standing order or rule of law by virtue of which it is unlawful for a relevant authority or any committee or sub-committee of such an authority to have regard to any person's political activities or affiliations in determining whether he should be appointed to any paid office or employment under the authority shall apply to the appointment of a person in pursuance of this section.
- (2) An appointment is an appointment in pursuance of this section if—
  - (a) the appointment is made for the purpose of providing assistance, in the discharge of any of their functions as members of a relevant authority, to the members of any political group to which members of the authority belong;
  - (b) the terms of the appointment comply with subsection (3) below;
  - (c) the appointment is to one of not more than three posts which a relevant authority have decided to create for the purposes of this section; and
  - (d) each of those posts falls, under the standing orders of the authority, to be filled from time to time in accordance with the wishes of a political group to which the post has been allocated under those standing orders.
- (3) The terms on which any person is appointed to or holds any appointment in pursuance of this section must be such as secure that the annual rate of remuneration for the post is less than the relevant amount and that the appointment terminates at or before the end of—
  - (a) in the case of a post under an authority in England and Wales, the day in the appropriate year on which the authority hold the meeting which they are required to hold in pursuance of paragraph 1 of Part I of Schedule 12 to the Local Government Act 1972 (annual meeting of principal councils); and
  - (b) in the case of a post under an authority in Scotland, the first day after the appointment on which a meeting is held in pursuance of the requirement under paragraph 1 of Schedule 7 to the Local Government (Scotland) Act 1973 that a meeting is held within twenty-one days from the date of an election.
- (4) For the purposes of subsection (3) above the annual rate of remuneration for a post under a relevant authority is less than the relevant amount if the annual rate of remuneration in respect of the post—
  - (a) is less than £13,500 or such higher amount as the Secretary of State may by order made by statutory instrument specify; and
  - (b) where that post is a part time post, would be less than that amount if it were a full time post and carried remuneration at the same rate;
 and a statutory instrument containing an order under this subsection shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) The standing orders of a relevant authority the members of which are divided into different political groups shall, for the purposes of subsection (2)(d) above—
  - (a) prohibit the making of an appointment to any post allocated to a political group until the authority have allocated a post to each of the groups which qualify for one;
  - (b) prohibit the allocation of a post to a political group which does not qualify for one; and
  - (c) prohibit the allocation of more than one post to any one political group.

- (6) Subject to subsection (7) below, where the members of a relevant authority are divided into different political groups, a group shall qualify for a post if—
- (a) the membership of that group comprises at least one-tenth of the membership of the authority;
  - (b) the number of the other groups (if any) which are larger than that group does not exceed two; and
  - (c) where the number of the other groups which are the same size as or larger than that group exceeds two, the authority have determined that that group should be a group to which a post is allocated;
- and it shall be the duty of a relevant authority, before making any allocation for the purposes of this section in a case in which there are groups which would qualify for posts if paragraph (c) above were disregarded, to make such determinations under that paragraph as secure that there are no more nor less than three groups which do qualify for a post.
- (7) Where the members of a relevant authority are divided into political groups only one of which has a membership that comprises one-tenth or more of the membership of the authority—
- (a) the groups qualifying for a post shall be that group and one other group; and
  - (b) the other group shall be the one with the next largest membership or, in a case in which there is more than one group with the next largest membership, such one of those groups as may be determined by the authority;
- and, in such a case, it shall be the duty of the authority to determine which of the groups with the next largest membership is to qualify for a post before making any allocation for the purposes of this section to the group with the largest membership.
- (8) Neither a relevant authority nor any committee or sub-committee of a relevant authority shall exercise any power under—
- (a) section 101 of the Local Government Act 1972 (delegation); or
  - (b) section 56 of, or Schedule 10 or 20 to, the Local Government (Scotland) Act 1973 (which makes corresponding provision for Scotland),
- so as to arrange for the discharge of any of the authority's functions by any person who holds a post under the authority to which he was appointed in pursuance of this section.
- (9) No person holding any office or employment under a relevant authority shall be required to work under the direction of a person holding a post to which he was appointed in pursuance of this section except for the purpose of providing that person, or the political group to which his post is allocated, with secretarial or clerical services.
- (10) Without prejudice to section 8 above, the Secretary of State may, for the purposes of this section and any standing orders relating to appointments in pursuance of this section, by regulations make provision—
- (a) as to the circumstances in which the members of a relevant authority are to be treated as divided into different political groups;
  - (b) as to the persons who are to be treated as members of such a group and as to when a person is to be treated as having ceased to be a member of such a group;
  - (c) requiring the question whether a person is or is not a member of a political group to be determined in such manner as may be provided for by or under the regulations;

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- (d) requiring a relevant authority from time to time to review allocations made for the purposes of this section;
- (e) specifying the manner in which, and times at which, the wishes of a political group are to be expressed and the consequences of a failure by such a group to express its wishes;

and regulations under this section may contain such incidental provision and such supplemental, consequential and transitional provision in connection with their other provisions as the Secretary of State considers appropriate.

(11) In this section—

“appropriate year”, in relation to a post held by any person under a relevant authority, means—

- (a) where the authority is one in relation to which provision for whole council elections has been made by virtue of section 7(4)(a) or 26(2)(a) of the Local Government Act 1972, the period of twelve months beginning with the first such election to be held after that person is appointed to that post; and
- (b) in any other case, the period of twelve months beginning with the third anniversary of that person’s appointment to that post;

“membership”, in relation to a relevant authority, means the number of persons who are for the time being members of the authority;

“relevant authority”—

- (a) in relation to England and Wales, means the council of any county, district or London borough; and
- (b) in relation to Scotland, means a regional, islands or district council.

## **10 Limit on paid leave for local authority duties**

(1) Notwithstanding anything in subsection (4) of section 29 of the Employment Protection (Consolidation) Act 1978 (conditions of time off for public duties), where—

- (a) a local authority permit an employee of theirs to take time off for the purpose of performing the duties of a member of a relevant council; and
- (b) those duties do not include the duties of chairman of the council,

it shall be unlawful for the authority to make any payment of remuneration or other payment to that employee in respect of so much (if any) of any time off for that purpose as is in excess of two hundred and eight hours in any one financial year and is time off to which the employee would not be entitled apart from his membership of that council.

(2) In this section—

“chairman”, in relation to a relevant council, includes any corresponding office the holder of which is referred to as mayor or Lord Mayor or by any other description;

“employee” has the same meaning as in the Employment Protection (Consolidation) Act 1978;

“financial year” means the twelve months ending with 31st March; and

“relevant council” means the council of any county, district or London borough, the Common Council of the City of London, a parish or community

council or any council in Scotland which is a local authority for the purposes of subsection (1) of section 29 of that Act (time off for public duties); and subsection (3) of that section (meaning of duties of a member of a body) shall apply for the purposes of this section as it applies for the purposes of that section.

## **11 Confidentiality of staff records**

- (1) Nothing in section 17 of the Local Government Finance Act 1982 or section 79 of the Local Government Act 1985 (public inspection of accounts etc.) or in section 101 or 106 of the Local Government (Scotland) Act 1973 (which makes corresponding provision for Scotland) shall entitle any person—
  - (a) to inspect so much of any document as contains personal information about a member of the relevant body's staff; or
  - (b) to require any such information to be disclosed in answer to any question.
- (2) Information shall be regarded as personal information about a member of the relevant body's staff if it relates specifically to a particular individual and is available to that body for reasons connected with the fact—
  - (a) that that individual holds or has held any office or employment under that body; or
  - (b) that payments or other benefits in respect of any office or employment under any other person are or have been made or provided to that individual by that body.
- (3) In this section—

“document” includes accounts, books, deeds, contracts, bills, vouchers and receipts; and

“relevant body” in relation to accounts which are required to be audited in accordance with Part III of the said Act of 1982 or Part VII of the said Act of 1973, means the body whose accounts are required to be audited or, as the case may be, the Common Council of the City of London;

and references in this section to a payment made or benefit provided to an individual in respect of any office or employment include references to a payment made or benefit provided to him in respect of his ceasing to hold the office or employment.
- (4) This section shall have effect only in relation to—
  - (a) the inspection of, or of documents relating to, accounts for periods beginning on or after 1st April 1990; and
  - (b) the disclosure of information in answer to questions about such accounts.

## **12 Conflict of interest in staff negotiations**

- (1) It shall be the duty of a local authority to secure that, so far as practicable, the interests of that authority in any negotiations with respect to the terms and conditions on which persons in local authority employment hold office or are employed are never represented, whether directly or indirectly by, or by persons who include—
  - (a) a person who is both a member of the authority and in such employment; or
  - (b) a person who is both a member of the authority and an official or employee of a trade union whose members include persons in local authority employment.
- (2) In this section—

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“member”, in relation to a trade union, includes any person who is a member of that union within the meaning of the Employment Act 1988; and

“official” and “trade union” have the same meanings as in the Trade Union and Labour Relations Act 1974;

and a person shall be treated for the purposes of this section as in local authority employment if he holds any paid office or employment under a local authority or any such paid office or employment under any other person as, by virtue of section 80(1)(a) of the Local Government Act 1972 or section 31(1)(a) of the Local Government (Scotland) Act 1973, disqualifies him for membership of any authority.

- (3) This section shall come into force at the expiry of the period of two months beginning on the day this Act is passed.

### *Voting rights of members of certain committees*

## **13 Voting rights of members of certain committees: England and Wales**

- (1) Subject to the following provisions of this section, a person who—
- (a) is a member of a committee appointed under a power to which this section applies by a relevant authority and is not a member of that authority;
  - (b) is a member of a joint committee appointed under such a power by two or more relevant authorities and is not a member of any of those authorities; or
  - (c) is a member of a sub-committee appointed under such a power by such a committee as is mentioned in paragraph (a) or (b) above and is not a member of the relevant authority, or one of the relevant authorities, which appointed that committee,

shall for all purposes be treated as a non-voting member of that committee, joint committee or, as the case may be, sub-committee.

- (2) The powers to which this section applies are—
- (a) the powers conferred on any relevant authority by subsection (1) of section 102 of the Local Government Act 1972 (ordinary committees, joint committees and sub-committees);
  - (b) the powers exercisable by any relevant authority in accordance with any arrangements approved under paragraph 1 of Part II of Schedule 1 to the Education Act 1944, by virtue of any order under paragraph 3 of that Part of that Schedule or by virtue of paragraph 10 of that Part of that Schedule (education committees, joint education committees and education sub-committees);
  - (c) the powers exercisable by any relevant authority for the purposes of section 2 of the Local Authority Social Services Act 1970 (social services committees) or by virtue of section 4 of that Act (joint social services committees and sub-committees).
- (3) Nothing in subsection (1) above shall require a person to be treated as a non-voting member of a committee or sub-committee falling within subsection (4) below; but, except—
- (a) in the case of a sub-committee appointed by a committee falling within paragraph (e) of that subsection; and
  - (b) in such cases as may be prescribed by regulations made by the Secretary of State,



a person who is a member of a sub-committee falling within that subsection shall for all purposes be treated as a non-voting member of that sub-committee unless he is a member of the committee which appointed the sub-committee.

- (4) A committee or sub-committee falls within this subsection if it is—
- (a) a committee appointed for the purposes of section 2 or 3(4) of the Police Act 1964 (constitution of a committee of a relevant authority as a police authority);
  - (b) a local fisheries committee for any sea fisheries district;
  - (c) a committee established in accordance with any regulations made by virtue of section 7 of the Superannuation Act 1972 (regulations making provision for the superannuation of persons employed in local government service etc.);
  - (d) a National Parks Committee;
  - (e) a committee appointed under section 102(4) of the Local Government Act 1972 (appointment of advisory committees by local authorities);
  - (f) a committee constituted in accordance with Part I of Schedule 2 to the Education Act 1980 (appeal committees for hearing school admissions appeals);
  - (g) a committee established exclusively for the purpose of discharging such functions of a relevant authority as may be prescribed by regulations made by the Secretary of State;
  - (h) a sub-committee appointed by a committee falling within any of paragraphs (a) to (g) above or such a sub-committee as is so prescribed.
- (5) Nothing in this section shall prevent—
- (a) any arrangements for the purposes of paragraph 1 of Part II of Schedule 1 to the Education Act 1944 (education committees);
  - (b) any order under paragraph 3 of that Part (joint education committees and sub-committees of joint education committees); or
  - (c) any order under paragraph 10 of that Part (sub-committees of education committees),
- from providing for a person who is not a member of a local education authority to be appointed as a voting member of an education committee or joint education committee, or of a sub-committee of such a committee or joint committee, in accordance with such provisions of the arrangements or order as are approved or made by the Secretary of State for the purpose of securing the representation on that committee, joint committee or sub-committee of persons who appoint foundation governors of voluntary schools in the area of the authority or, as the case may be, in the area of any of the authorities which have appointed the joint education committee.
- (6) The Secretary of State may, if it appears to him appropriate to do so in consequence of the preceding provisions of this section, withdraw any approval given before the coming into force of this section in relation to any arrangements for the purposes of paragraph 1 of Part II of Schedule 1 to the said Act of 1944.
- (7) Where a person is treated by virtue of this section as a non-voting member of any committee, joint committee or sub-committee, he shall not be entitled to vote at any meeting of the committee, joint committee or sub-committee on any question which falls to be decided at that meeting; and the reference in subsection (5) above to a voting member, in relation to any education committee or sub-committee of an education committee, is a reference to a person who is entitled to vote at any meeting of that committee or sub-committee on any question which falls to be decided at that meeting.

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- (8) In subsection (3) of section 102 of the Local Government Act 1972, the words from “but at least” onwards (which require at least two-thirds of certain committees to be members of the appointing authority or authorities) shall be omitted.
- (9) In this section—  
     “foundation governors” has the same meaning as in the Education Act 1944; and  
     “relevant authority” means a local authority of any of the descriptions specified in paragraphs (a) to (j) of section 21(1) below or any parish or community council;  
 and references in this section to voting include references to making use of a casting vote.

#### **14      Voting rights of members of certain committees: Scotland**

- (1) Subject to the following provisions of this section, a person who—  
     (a) is a member of a committee appointed under subsection (1) of section 57 of the Local Government (Scotland) Act 1973 by a relevant authority and is not a member of that authority;  
     (b) is a member of a joint committee appointed under that subsection by two or more relevant authorities and is not a member of any of those authorities; or  
     (c) is a member of a sub-committee appointed under that subsection by such a committee as is mentioned in paragraph (a) or (b) above and is not a member of the relevant authority, or one of the relevant authorities, which appointed that committee,  
 shall for all purposes be treated as a non-voting member of that committee, joint committee or, as the case may be, sub-committee.
- (2) Subject to the following provisions of this section, a person who—  
     (a) is a member of an education committee appointed under section 124 of the Local Government (Scotland) Act 1973 by an education authority and is not a member of that authority;  
     (b) is a member of a joint committee appointed under paragraph 7 of Schedule 10 to that Act by two or more education authorities and is not a member of any of these authorities; or  
     (c) is a member of a sub-committee appointed under paragraph 8 of that Schedule by an education committee or such a joint committee and is not a member of the education committee or, as the case may be, one of the education authorities which appointed the joint committee,  
 shall for all purposes be treated as a non-voting member of that committee, joint committee or, as the case may be, sub-committee.
- (3) Subject to the following provisions of this section, a person who—  
     (a) is a member of a social work committee appointed under section 2 of the Social Work (Scotland) Act 1968 by a local authority for the purposes of that Act and is not a member of that authority;  
     (b) is a member of a joint committee appointed under paragraph 6 of Schedule 20 to the Local Government (Scotland) Act 1973 by two or more such authorities and is not a member of any of those authorities; or

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- (c) is a member of a sub-committee appointed under paragraph 7 of that Schedule by a social work committee or such a joint committee and is not a member of the social work committee or, as the case may be, one of the local authorities which appointed the joint committee,  
shall for all purposes be treated as a non-voting member of that committee, joint committee or, as the case may be, sub-committee.
- (4) Nothing in subsections (1) to (3) above shall require a person to be treated as a non-voting member of a committee or sub-committee falling within subsection (5) below; but, except—
  - (a) in the case of a sub-committee appointed by a committee falling within paragraph (b) of that subsection; and
  - (b) in such cases as may be prescribed by regulations made by the Secretary of State,a person who is a member of a sub-committee falling within that subsection shall for all purposes be treated as a non-voting member of that sub-committee unless he is a member of the committee which appointed the sub-committee.
- (5) A committee or sub-committee falls within this subsection if it is—
  - (a) a committee established in accordance with any regulations made by virtue of section 7 of the Superannuation Act 1972 (regulations making provision for the superannuation of persons employed in local government service etc.);
  - (b) a committee appointed under section 57(4) of the Local Government (Scotland) Act 1973 (appointment of advisory committees by local authorities);
  - (c) a committee constituted in accordance with Schedule A1 to the Education (Scotland) Act 1980 (appeal committees for hearing placing and other appeals);
  - (d) a Children's Panel Advisory Committee formed under paragraph 3 of Schedule 3 to the Social Work (Scotland) Act 1968;
  - (e) a committee established exclusively for the purpose of discharging such functions of a relevant authority as may be prescribed by regulations made by the Secretary of State;
  - (f) a sub-committee appointed by a committee falling within any of paragraphs (a) to (e) above or such a sub-committee as is so prescribed.
- (6) Nothing in this section shall prevent the appointment as a voting member of—
  - (a) an education committee; or
  - (b) a joint committee appointed under paragraph 7 of Schedule 10 to the Local Government (Scotland) Act 1973; or
  - (c) a sub-committee appointed under paragraph 8 of that Schedule,of a person appointed to the education committee under paragraph (a) of subsection (3) of section 124 of that Act (appointment of certain persons to education committees).
- (7) Where a person is treated by virtue of this section as a non-voting member of any committee, joint committee or sub-committee, he shall not be entitled to vote at any meeting of the committee, joint committee or sub-committee on any question which falls to be decided at that meeting; and the reference in subsection (6) above to a voting member, in relation to any such committee, joint committee or sub-committee as is mentioned in that subsection, is a reference to a person who is entitled to vote at any

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meeting of that committee, joint committee or sub-committee on any question which falls to be decided at that meeting.

(8) In the Local Government (Scotland) Act 1973—

- (a) in section 57(3), the words from “but at least” onwards (which require at least two-thirds of certain committees to be members of the appointing authority or authorities);
- (b) in section 161(6), the words from “but at least” onwards (which make corresponding provision in relation to a social work committee);
- (c) in Schedule 10, paragraph 11 (which requires at least half of a joint education committee to be members of the appointing authorities);
- (d) in Schedule 20, paragraph 10 (which requires at least two-thirds of a joint social work committee to be members of the appointing authorities),

shall be omitted.

(9) In this section “relevant authority” means a regional, islands or district council; and references in this section to voting include references to making use of a casting vote.

*Political balance on committees etc.*

## **15 Duty to allocate seats to political groups**

(1) It shall be the duty of a relevant authority having power from time to time to make appointments to a body to which this section applies to review the representation of different political groups on that body—

- (a) where the members of the authority are divided into different political groups at the time when this section comes into force, as soon as practicable after that time;
- (b) where the authority hold annual meetings in pursuance of paragraph 1 of Part I of Schedule 12 to the Local Government Act 1972 (annual meeting of principal councils) and the members of the authority are divided into different political groups at the time of any such meeting, at or as soon as practicable after the meeting;
- (c) where, at the time of the meeting required by paragraph 1 of Schedule 7 to the Local Government (Scotland) Act 1973 to be held in an election year within twenty-one days of the election, the members of the authority are divided into different political groups, at or as soon as practicable after the meeting;
- (d) as soon as practicable after any such division as is mentioned in paragraphs (a) to (c) above occurs; and
- (e) at such other times as may be prescribed by regulations made by the Secretary of State.

(2) Except in such cases as may be prescribed by regulations made by the Secretary of State, it shall be the duty of every committee of a relevant authority which is a committee having power from time to time to make appointments to a body to which this section applies to review the representation of different political groups on that body—

- (a) where the members of the authority are divided into different political groups at the time when this section comes into force, as soon as practicable after that time; and

- (b) as soon as practicable after any occasion on which the members of the committee are changed in consequence of a determination under this section.
- (3) Where at any time the representation of different political groups on a body to which this section applies falls to be reviewed under this section by any relevant authority or committee of a relevant authority, it shall be the duty of that authority or committee, as soon as practicable after the review, to determine the allocation to the different political groups into which the members of the authority are divided of all the seats which fall to be filled by appointments made from time to time by that authority or committee.
- (4) Subject to subsection (6) below, it shall be the duty of a relevant authority or committee of a relevant authority—
  - (a) in performing their duty under subsection (3) above; and
  - (b) in exercising their power, at times not mentioned in subsection (3) above, to determine the allocation to different political groups of seats on a body to which this section applies,to make only such determinations as give effect, so far as reasonably practicable, to the principles specified in subsection (5) below.
- (5) The principles mentioned in subsection (4) above, in relation to the seats on any body which fall to be filled by appointments made by any relevant authority or committee of a relevant authority, are—
  - (a) that not all the seats on the body are allocated to the same political group;
  - (b) that the majority of the seats on the body is allocated to a particular political group if the number of persons belonging to that group is a majority of the authority's membership;
  - (c) subject to paragraphs (a) and (b) above, that the number of seats on the ordinary committees of a relevant authority which are allocated to each political group bears the same proportion to the total of all the seats on the ordinary committees of that authority as is borne by the number of members of that group to the membership of the authority; and
  - (d) subject to paragraphs (a) to (c) above, that the number of the seats on the body which are allocated to each political group bears the same proportion to the number of all the seats on that body as is borne by the number of members of that group to the membership of the authority.
- (6) Where any relevant authority or committee of a relevant authority are required, in determining the allocation to different political groups of seats on a body to which this section applies, to give effect to the principles specified in subsection (5) above—
  - (a) any seats which, in accordance—
    - (i) with provision made by virtue of subsection (5) of section 13 above;
    - or
    - (ii) with subsection (6) of section 14 above,are to be or may be filled by the appointment of persons who are not members of the authority shall be taken into account for the purpose of determining how many seats constitute a majority of the seats on a body mentioned in either of those subsections; but
  - (b) that authority or committee shall, in making that determination, disregard for all other purposes any seats which, in accordance with any such provision, the said subsection (6) or otherwise, are to be or may be so filled;and for the purposes of this subsection a seat on an advisory committee of a relevant authority or on a sub-committee appointed by such an advisory committee shall not

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be treated as one which may be so filled unless the authority have determined that it must be so filled.

- (7) Schedule 1 to this Act shall have effect for determining the bodies to which this section applies and for the construction of this section and sections 16 and 17 below.

## **16 Duty to give effect to allocations**

- (1) Where any relevant authority or any committee of a relevant authority have determined the allocation to different political groups of the seats on a body to which section 15 above applies, it shall be the duty of that authority or committee so to exercise their power to make appointments to that body as to give effect—
- (a) as soon as practicable after the determination; and
  - (b) if a vacancy subsequently occurs on that body, as soon as practicable after the occurrence of the vacancy,
- to such wishes about who is to be appointed to the seats on that body which are allocated to a particular political group as are expressed by that group.
- (2) Where—
- (a) any person has been appointed, otherwise than for a fixed term, to a body to which section 15 above applies; and
  - (b) that appointment was made, in pursuance of subsection (1) above, in accordance with the wishes of a political group,
- then, so long as that person's seat continues to be allocated to that group, the authority or committee which made the appointment shall act in accordance with the wishes of that group in determining whether and when to terminate the appointment.
- (3) The proceedings of a body to which section 15 above applies shall not be invalidated by any defect by virtue of this section or that section in the appointment of any person to that body.
- (4) This section applies in relation to an allocation of seats to different political groups whether or not that allocation is made in pursuance of any duty under section 15 above.

## **17 Exceptions to and extensions of political balance requirements**

- (1) Subject to subsection (2) below, sections 15 and 16 above shall not apply in relation to appointments by a relevant authority or committee of a relevant authority to any body in so far as different provision is made by arrangements approved by the authority or committee—
- (a) in such manner as may be prescribed by regulations made by the Secretary of State; and
  - (b) without any member of the authority or committee voting against them.
- (2) Arrangements approved under subsection (1) above in relation to any body shall not affect any duty imposed by virtue of section 15(1)(c), (d) or (e) or (2) above on a relevant authority or committee to review the representation of different political groups on that body; and, accordingly, such arrangements shall cease to have effect when any such duty arises.
- (3) The Secretary of State may, for the purpose of securing what appears to him to be the appropriate representation of different political groups on any sub-committee falling within subsection (4) below, by regulations make such provision as he thinks fit.

- (4) The sub-committees that fall within this subsection are those to which appointments may be made by bodies to which section 15 above applies but which are not themselves such bodies.
- (5) Without prejudice to the generality of subsection (3) above, regulations under that subsection may contain provision applying, with or without modifications, any provision made by or under section 15 or 16 above, subsections (1) and (2) above or Schedule 1 to this Act.

### *Allowances*

## **18 Schemes for basic, attendance and special responsibility allowances for local authority members**

- (1) The Secretary of State may by regulations authorise or require any such relevant authority as may be specified or described in the regulations to make a scheme providing for the payment of—
  - (a) a basic allowance for every member of the authority who is a councillor;
  - (b) an attendance allowance in relation to the carrying out by any such member of such duties as may be specified in or determined under the regulations; and
  - (c) a special responsibility allowance for any such member who has such special responsibilities in relation to the authority as may be so specified or determined.
- (2) Regulations under this section may also authorise or require a scheme made by a relevant authority under the regulations to include provision for the payment to appointed members of allowances in respect of such losses of earnings and expenses as—
  - (a) are necessarily sustained or incurred in the carrying out, in connection with their membership of the authority or any committee or sub-committee of the authority, of duties specified in or determined under the regulations; and
  - (b) are not of a description in respect of which provision is made for an allowance under any of sections 174 to 176 of the Local Government Act 1972 or sections 46 to 48 of the Local Government (Scotland) Act 1973.
- (3) Without prejudice to the generality of the powers conferred by subsections (1) and (2) above, regulations under this section may contain such provision as the Secretary of State considers appropriate for requiring a scheme made by a relevant authority under the regulations—
  - (a) to make it a condition of any payment by way of allowance that, in the financial year to which the payment would relate, the aggregate amount which the authority has paid out or is already liable to pay out under the scheme does not exceed such maximum amount as may be specified in or determined under the regulations;
  - (b) to make provision for different maximum amounts to be applicable, for the purposes of any such condition, in relation to different allowances or in relation to different members or members of different groups;
  - (c) to make provision in relation to claims which cannot be paid by virtue of any such condition and provision for the payment to members of the authority who are councillors of an amount by way of supplement to the basic allowance

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where, in any financial year, the aggregate paid out or owing under the scheme is less than an amount specified in or determined under the regulations;

- (d) to provide that the amount authorised by virtue of subsection (2) above to be paid by way of allowance in any case shall not exceed such amount as may be so specified or determined;
- (e) to contain such provision as may be so specified or determined with respect to the general administration of the scheme, with respect to the manner in which, time within which and forms on which claims for any allowance are to be made and with respect to the information to be provided in support of any such claim;
- (f) to contain such provision as may be so specified or determined for avoiding the duplication of payments or of allowances, for determining the bodies by which payments of allowances are to be made and for the apportionment of payments between different bodies.

(4) Regulations under this section may—

- (a) prohibit the payment, otherwise than in accordance with sections 174 to 176 of the Local Government Act 1972 or sections 46 to 48 of the Local Government (Scotland) Act 1973 or in such other cases as may be specified in the regulations, of any allowance to a member of a relevant authority who is a councillor or to any appointed member of a relevant authority;
- (b) impose requirements on a relevant authority with respect to the publication, in the minutes of that authority or otherwise, of the details of amounts paid in pursuance of a scheme made under the regulations; and
- (c) contain such incidental provision and such supplemental, consequential and transitional provision in connection with the other provisions of the regulations as the Secretary of State considers appropriate.

(5) In this section “relevant authority” means—

- (a) a local authority of any of the descriptions specified in any of the paragraphs of section 21(1) below, other than paragraphs (d) and (j), or in section 21(2) below;
- (b) any body on which a body which is a relevant authority by virtue of paragraph (a) above is represented and which is designated as a relevant authority for the purposes of this section by regulations made by the Secretary of State; or
- (c) any appeal committee so designated which is constituted in accordance with paragraph 2 or 3 of Schedule 2 to the Education Act 1980;

and references in this section to an appointed member, in relation to a relevant authority, are references to any person who is a member of the authority without being a councillor or who is a member of one or more of the authority’s committees or sub-committees without being a member of the authority.

(6) In this section any reference to a councillor includes a reference to a member of the authority concerned who, in accordance with regulations under this section, is to be treated as if he were a councillor.



### *Members' interests*

## **19 Members' interests**

- (1) The Secretary of State may by regulations require each member of a local authority—
  - (a) to give a general notice to the proper officer of the authority setting out such information about the member's direct and indirect pecuniary interests as may be prescribed by the regulations, or stating that he has no such interests; and
  - (b) from time to time to give to that officer such further notices as may be so prescribed for the purpose of enabling that officer to keep the information provided under the regulations up to date.
- (2) Any member of a local authority who—
  - (a) without reasonable excuse fails to comply with the requirements of any regulations under this section; or
  - (b) in giving a notice in compliance with any such requirement, provides information which he knows to be false or misleading in a material particular or recklessly provides information which is false or misleading in a material particular,shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.
- (3) Proceedings for an offence under subsection (2) above shall not be instituted in England and Wales except by or with the consent of the Director of Public Prosecutions.
- (4) Neither section 96 of the Local Government Act 1972 (general notice of pecuniary interests) nor section 40 of the Local Government (Scotland) Act 1973 (corresponding provision for Scotland) shall apply in relation to any notice given in pursuance of any regulations under this section; but such regulations may provide—
  - (a) that the giving of a notice in pursuance of any such regulations shall be deemed to be sufficient disclosure for the purposes of section 94 of the said Act of 1972 (disability of members of authorities for voting on account of interest in contracts etc.) or for the purposes of section 38 of the said Act of 1973; and
  - (b) that the proper officer of a local authority is to maintain such records of the information contained in notices given to him as may be prescribed by the regulations and is to keep those records open to inspection by members of the public.
- (5) A local authority shall not be entitled (whether by means of making it a condition of any appointment or by any other means whatever) to impose any obligations on their members to disclose any interests other than those that they are required to disclose by virtue of section 94 of the Local Government Act 1972, section 38 of the Local Government (Scotland) Act 1973 or any regulations under this section.
- (6) Regulations under this section may contain such incidental provision and such supplemental, consequential and transitional provision in connection with their other provisions as the Secretary of State considers appropriate.
- (7) References in this section to the indirect pecuniary interests of a member of a local authority shall include references to any such interests as, by virtue of any connection between that member or his spouse and any other person, would fall to be disclosed—

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- (a) in the case of a local authority in England and Wales, under section 94 of the Local Government Act 1972; or
  - (b) in the case of a local authority in Scotland, under section 38 of the Local Government (Scotland) Act 1973,
- if the authority were proposing to enter into a contract with that other person.

*Duty to adopt certain procedural standing orders*

## **20 Duty to adopt certain procedural standing orders**

- (1) The Secretary of State may by regulations require relevant authorities, subject to such variations as may be authorised by the regulations—
  - (a) to incorporate such provision as may be prescribed by the regulations in standing orders for regulating their proceedings and business; and
  - (b) to make or refrain from making such other modifications of any such standing orders as may be so prescribed.
- (2) Without prejudice to the generality of subsection (1) above, regulations under this section may require such standing orders as are mentioned in that subsection to contain provision which, notwithstanding any enactment or the decision of any relevant authority or committee or sub-committee of a relevant authority, authorises persons who are members of such an authority, committee or sub-committee—
  - (a) to requisition meetings of the authority or of any of their committees or sub-committees;
  - (b) to require a decision of a committee or sub-committee of the authority to be referred to and reviewed by the authority themselves or by a committee of the authority;
  - (c) to require that a vote with respect to a matter falling to be decided by the authority or by any of their committees or sub-committees is to be taken in a particular manner.
- (3) Regulations under this section may contain such incidental provision and such supplemental, consequential and transitional provision in connection with their other provisions as the Secretary of State considers appropriate.
- (4) In this section “relevant authority”—
  - (a) in relation to England and Wales, means a local authority of any of the descriptions specified in paragraphs (a) to (j) of section 21(1) below or any parish or community council; and
  - (b) in relation to Scotland, means a local authority.

*Interpretation of Part I*

## **21 Interpretation of Part I**

- (1) Any reference in this Part to a local authority is, in relation to England and Wales, a reference to a body of one of the following descriptions—
  - (a) a county council;
  - (b) a district council;
  - (c) a London borough council;

- (d) the Common Council of the City of London in its capacity as a local authority, police authority or port health authority;
  - (e) the Council of the Isles of Scilly;
  - (f) a fire authority constituted by a combination scheme under the Fire Services Act 1947;
  - (g) a combined police authority established by an amalgamation scheme under the Police Act 1964;
  - (h) an authority established under section 10 of the Local Government Act 1985 (waste disposal authorities);
  - (i) a joint authority established by Part IV of that Act (police, fire services, civil defence and transport);
  - (j) any body established pursuant to an order under section 67 of that Act (successors to residuary bodies);
  - (k) the Broads Authority;
  - (l) any joint board the constituent members of which consist of any of the bodies specified above; and
  - (m) a joint or special planning board constituted for a National Park by an order under paragraph 1 or paragraph 3 of Schedule 17 to the Local Government Act 1972.
- (2) Any reference in this Part to a local authority is, in relation to Scotland, a reference to a regional, islands or district council or a joint board within the meaning of section 235(1) of the Local Government (Scotland) Act 1973.
- (3) In this Part—
- “contravention” includes a failure to comply;
  - “modifications” includes additions, alterations and omissions;
  - “proper officer”—
  - (a) in relation to a local authority in England and Wales, has the same meaning as in the Local Government Act 1972; and
  - (b) in relation to a local authority in Scotland, has the same meaning as in the Local Government (Scotland) Act 1973; and
  - “subordinate legislation” has the same meaning as in the Interpretation Act 1978.
- (4) References in this Part to an officer of a local authority or to a paid office under a local authority do not include references to, or to the office of, the chairman or vice-chairman of the authority (whether referred to as such, as mayor, Lord Mayor, deputy mayor, as Lord Provost or otherwise).

## PART II

### LOCAL GOVERNMENT ADMINISTRATION

#### 22 Advisory Commissioners

- (1) Section 23 of the Local Government Act 1974 (constitution and functions of Commissions for Local Administration) shall have effect with the amendments specified in subsections (2) to (4) below.

- (2) In subsection (1), at the end, there shall be added the words “but each of the Commissions may include persons appointed to act as advisers, not exceeding the number appointed to conduct investigations.”
- (3) In subsection (3), after the words “Parliamentary Commissioner” there shall be inserted the words “or an advisory member”.
- (4) In subsections (4), (5) and (6) the word “Local” shall be omitted.
- (5) In Schedule 4 to the said Act, in paragraph 3 (remuneration), at the end there shall be inserted the following sub-paragraph—
  - “(3) Sub-paragraphs (1) and (2) above apply in relation to Commissioners who are advisory members of the Commission as they apply in relation to Local Commissioners.”

## **23 Advice and guidance by Commissions for Local Administration and Scottish Commissioner**

- (1) In section 23 of the Local Government Act 1974 (appointment and functions of Commissions for Local Administration) there shall be inserted, after subsection (12), the following subsections—
  - “(12A) Each of the Commissions may, after consultation with the representative persons and authorities concerned, provide to the authorities or any of the authorities to which this Part of this Act applies such advice and guidance about good administrative practice as appears to the Commission to be appropriate and may arrange for it to be published for the information of the public.
  - (12B) The representative persons and authorities concerned are—
    - (a) for the purposes of subsection (12) above, such persons appearing to the Commission to represent authorities in England or, as the case may be, authorities in Wales to which this Part of this Act applies, and in the case of such authorities as are not so represented, those authorities; and
    - (b) for the purposes of subsection (12A) above, such of those persons and authorities as the Commission think appropriate.”
- (2) In section 21 of the Local Government (Scotland) Act 1975 (appointment and functions of Commissioner for Local Administration in Scotland) there shall be inserted, after subsection (4), the following subsection—
  - “(4A) The Commissioner may, after consultation with such associations of local authorities as appear to him to be appropriate, provide to the authorities to which this Part of this Act applies such advice and guidance about good administrative practice as appears to him to be appropriate and may arrange for it to be published for the information of the public.”

## **24 Expenses of Commissions for Local Administration**

- (1) The following provisions shall be substituted for paragraphs 6 to 11 of Schedule 4 to the Local Government Act 1974—

*“Expenses of the Commissions*

- 6      (1) Each of the Commissions shall be treated as if they were a specified body for the purposes of sections 78 and 79 (revenue support grant) of the Local Government Finance Act 1988 (“the 1988 Act”), and those sections shall accordingly have effect with the following modifications.
- (2) Before making a determination under section 78 of the 1988 Act, the Secretary of State shall, except in the case mentioned in paragraph 8 below, take into account estimates of the expenses of each Commission together with any observations thereon made and submitted to him in accordance with paragraph 7 below.
- (3) The Secretary of State may also take into account any other information available to him as to the expenses of the Commissions, whatever its source.
- (4) A determination under section 78 of the 1988 Act shall not be invalid merely because the requirements of paragraph 7 below were not complied with.
- (5) For the purposes of section 78(7) of the 1988 Act, each Commission shall be treated as if they were also a notifiable authority.
- 7      (1) Each Commission shall prepare an estimate of the expenses which they will incur in the forthcoming financial year with a view to submitting it to the Secretary of State.
- (2) Each Commission shall send copies of the estimate to such representatives of local government as the Secretary of State directs for consideration by those representatives.
- (3) Any observations by those representatives shall be submitted to the Commission within one month of the receipt of the Commission’s estimate, and it shall be the duty of the Commission to take any such observations into consideration before submitting their estimate of their expenses to the Secretary of State.
- (4) Each Commission shall, not later than such date in any year as the Secretary of State specifies in writing to the Commission, submit their estimate of their expenses for the forthcoming financial year to the Secretary of State together with copies of all observations made under this paragraph by the representatives of local government or, if none were made, together with a statement of that fact.
- 8      Where a Commission fail to submit an estimate of their expenses for the forthcoming financial year under paragraph 7 above, the Secretary of State may, for the purposes of a determination under section 78 of the 1988 Act, assume those expenses to be such as he sees fit.”
- (2) Anything done before the passing of this Act which corresponds to a thing authorised or required to be done by any provision of the paragraphs 6(2) and (3), 7 and 8 substituted by subsection (1) above and done for the purposes of sections 78 and 79 of the Local Government Finance Act 1988 shall be treated as validly done under that provision and those sections shall have effect accordingly.

- (3) The foregoing provisions shall have effect for the financial years beginning on or after 1st April 1990.

## **25 Annual reports of Commissions: new provisions**

- (1) The representative body for England and the representative body for Wales designated under section 24 of the Local Government Act 1974 are hereby dissolved and accordingly that section shall cease to have effect.
- (2) After section 23 of that Act there shall be inserted the following section—

### **“23A Annual reports for representatives etc**

- (1) For the financial year ending in 1990 and for each subsequent financial year, each of the Commissions shall prepare a general report on the discharge of their functions and shall submit it—
- (a) to such persons as appear to the Commission to represent authorities in England or, as the case may be, authorities in Wales to which this Part of this Act applies, and
  - (b) in the case of such authorities as are not so represented, to those authorities.
- (2) The report shall be submitted as soon as may be after the Commission have received the reports for the year from Local Commissioners under section 23(11) above, and each Commission shall submit copies of those reports, together with their own report.
- (3) Each Commission shall arrange for the publication of the report submitted by them under subsection (1) above and of the reports of which copies are submitted by them under subsection (2) above.
- (4) Before arranging for the publication of a report under subsection (3) above the Commission concerned shall give a reasonable opportunity for the representative persons and authorities to whom the report was submitted to comment on it.
- (5) Without prejudice to the generality of subsection (4) above, comments made by the representative persons and authorities by virtue of that subsection may relate to particular classes of authorities to which this Part of this Act applies.
- (6) Where the Commission for Local Administration in Wales consist of only one Local Commissioner, section 23(11) above and subsection (2) above shall have effect with the necessary modifications.”

## **26 Implementation of recommendations of Commissioners for Local Administration in England and Wales**

- (1) In section 31 of the Local Government Act 1974 (action to be taken in relation to adverse reports), the following subsections shall be substituted for subsections (1) to (2A)—
- “(1) This section applies where a Local Commissioner reports that injustice has been caused to a person aggrieved in consequence of maladministration.

- (2) The report shall be laid before the authority concerned and it shall be the duty of that authority to consider the report and, within the period of three months beginning with the date on which they received the report, or such longer period as the Local Commissioner may agree in writing, to notify the Local Commissioner of the action which the authority have taken or propose to take.
- (2A) If the Local Commissioner—
- (a) does not receive the notification required by subsection (2) above within the period allowed by or under that subsection, or
  - (b) is not satisfied with the action which the authority concerned have taken or propose to take, or
  - (c) does not within a period of three months beginning with the end of the period so allowed, or such longer period as the Local Commissioner may agree in writing, receive confirmation from the authority concerned that they have taken action, as proposed, to the satisfaction of the Local Commissioner,
- he shall make a further report setting out those facts and making recommendations.
- (2B) Those recommendations are such recommendations as the Local Commissioner thinks fit to make with respect to action which, in his opinion, the authority concerned should take to remedy the injustice to the person aggrieved and to prevent similar injustice being caused in the future.
- (2C) Section 30 above, with any necessary modifications, and subsection (2) above shall apply to a report under subsection (2A) above as they apply to a report under that section.
- (2D) If the Local Commissioner—
- (a) does not receive the notification required by subsection (2) above as applied by subsection (2C) above within the period allowed by or under that subsection or is satisfied before the period allowed by that subsection has expired that the authority concerned have decided to take no action, or
  - (b) is not satisfied with the action which the authority concerned have taken or propose to take, or
  - (c) does not within a period of three months beginning with the end of the period allowed by or under subsection (2) above as applied by subsection (2C) above, or such longer period as the Local Commissioner may agree in writing, receive confirmation from the authority concerned that they have taken action, as proposed, to the satisfaction of the Local Commissioner,
- he may, by notice to the authority, require them to arrange for a statement to be published in accordance with subsections (2E) and (2F) below.
- (2E) The statement referred to in subsection (2D) above is a statement, in such form as the authority concerned and the Local Commissioner may agree, consisting of—
- (a) details of any action recommended by the Local Commissioner in his further report which the authority have not taken;
  - (b) such supporting material as the Local Commissioner may require; and

- (c) if the authority so require, a statement of the reasons for their having taken no action on, or not the action recommended in, the report.
- (2F) The requirements for the publication of the statement are that—
  - (a) publication shall be in any two editions within a fortnight of a newspaper circulating in the area of the authority agreed with the Local Commissioner or, in default of agreement, nominated by him; and
  - (b) publication in the first such edition shall be arranged for the earliest practicable date.
- (2G) If the authority concerned—
  - (a) fail to arrange for the publication of the statement in accordance with subsections (2E) and (2F) above, or
  - (b) are unable, within the period of one month beginning with the date on which they received the notice under subsection (2D) above, or such longer period as the Local Commissioner may agree in writing, to agree with the Local Commissioner the form of the statement to be published,

the Local Commissioner shall arrange for such a statement as is mentioned in subsection (2E) above to be published in any two editions within a fortnight of a newspaper circulating within the authority's area.
- (2H) The authority concerned shall reimburse the Commission on demand any reasonable expenses incurred by the Local Commissioner in performing his duty under subsection (2G) above.”
- (2) This section shall not have effect in relation to a report made before the coming into force of this section.

## **27 Implementation of recommendations of Commissioner for Local Administration in Scotland**

- (1) In section 29 of the Local Government (Scotland) Act 1975 (action to be taken in relation to adverse reports), the following subsections shall be substituted for subsections (1) to (2A)—
  - “(1) This section applies where the Commissioner reports that injustice has been caused to a person aggrieved in consequence of maladministration.
  - (2) The report shall be laid before the authority concerned and it shall be the duty of that authority to consider the report and, within the period of three months beginning with the date on which they received the report, or such longer period as the Commissioner may agree in writing, to notify the Commissioner of the action which the authority have taken or propose to take.
- (2A) If the Commissioner—
  - (a) does not receive the notification required by subsection (2) above within the period allowed by or under that subsection, or
  - (b) is not satisfied with the action which the authority concerned have taken or propose to take, or
  - (c) does not within a period of three months beginning with the end of the period so allowed, or such longer period as the Commissioner may



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agree in writing, receive confirmation from the authority concerned that they have taken action, as proposed, to the satisfaction of the Commissioner,

he shall make a further report setting out those facts and making recommendations.

(2B) Those recommendations are such recommendations as the Commissioner thinks fit to make with respect to the action which, in his opinion, the authority concerned should take to remedy the injustice to the person aggrieved and to prevent similar injustice being caused in the future.

(2C) Section 28 of this Act, with any necessary modifications, and subsection (2) above shall apply to a report under subsection (2A) above as they apply to a report under that section.

(2D) If the Commissioner—

- (a) does not receive the notification required by subsection (2) above as applied by subsection (2C) above within the period allowed by or under that subsection or is satisfied before the period allowed by that subsection has expired that the authority concerned have decided to take no action; or
- (b) is not satisfied with the action which the authority concerned have taken or propose to take; or
- (c) does not within a period of three months beginning with the end of the period allowed by or under subsection (2) above as applied by subsection (2C) above, or such longer period as the Commissioner may agree in writing, receive confirmation from the authority concerned that they have taken action, as proposed, to the satisfaction of the Commissioner,

he may, by notice to the authority, require them to arrange for a statement to be published in accordance with subsections (2E) and (2F) below.

(2E) The statement referred to in subsection (2D) above is a statement, in such form as the authority concerned and the Commissioner may agree, consisting of—

- (a) details of any action recommended by the Commissioner in his further report which the authority have not taken;
- (b) such supporting material as the Commissioner may require; and
- (c) if the authority so require, a statement of the reasons for their having taken no action on, or not the action recommended in, the report.

(2F) The requirements for the publication of the statement are that—

- (a) publication shall be in any two editions within a fortnight of a newspaper circulating in the area of the authority agreed with the Commissioner or, in default of agreement, nominated by him; and
- (b) publication in the first such edition shall be arranged for the earliest practicable date.

(2G) If the authority concerned—

- (a) fail to arrange for the publication of the statement in accordance with subsections (2E) and (2F) above, or
- (b) are unable, within the period of one month beginning with the date on which they received the notice under subsection (2D) above, or such

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longer period as the Commissioner may agree in writing, to agree with the Commissioner the form of the statement to be published, the Commissioner shall arrange for such a statement as is mentioned in subsection (2E) above to be published in any two editions within a fortnight of a newspaper circulating within the authority's area.

(2H) The authority concerned shall reimburse the Commissioner on demand any reasonable expenses incurred by the Commissioner in performing his duty under subsection (2G) above."

(2) In section 32 of the Local Government (Scotland) Act 1975 (interpretation of provisions about investigations by the Commissioner) the following subsection shall be inserted after subsection (2)—

"(2A) Except in the case of a joint board or joint committee, references in this Part of this Act to the authority concerned are, in relation to action taken by or on behalf of an authority to whom this Part of this Act applies (whether by virtue of subsection (1) or (2) of section 23 of this Act), references to that authority."

(3) This section shall not have effect in relation to a report made before the coming into force of this section.

## **28 Consideration of adverse reports: England and Wales**

(1) The following section shall be inserted after section 31 of the Local Government Act 1974—

### **"31A Consideration of adverse reports**

(1) Subject to subsection (3) below, any power of an authority to have their functions discharged by any person or body of persons acting for the authority shall, as respects the consideration of a further report of the Local Commissioner under section 31(2A) above, be subject to the restriction that, if it is proposed that the authority should take no action on, or not the action recommended in, the report, consideration of the report shall be referred to the authority.

(2) Consideration of a further report of the Local Commissioner under section 31(2A) above by any such committee of a local authority as is referred to in an enactment specified in section 101(9) of the Local Government Act 1972 or by any appeal committee constituted in accordance with paragraph 1 of Schedule 2 to the Education Act 1980 shall be subject to a corresponding restriction.

(3) The restriction imposed by subsections (1) and (2) above does not apply where the report recommends action to be taken by—

- (a) a joint committee established under the said section 101, or
- (b) any committee referred to in an enactment specified in paragraph (c), (d) or (h) of the said section 101(9).

(4) If an authority considering a further report of the Local Commissioner under section 31(2A) above take into consideration a report by a person or body with an interest in the Local Commissioner's report, they shall not conclude their consideration of the Local Commissioner's report without also having

taken into consideration a report by a person or body with no interest in the Local Commissioner's report.

(5) No member of an authority to which this Part of this Act applies or of a committee mentioned in subsection (2) or (3) above shall vote on any question with respect to a report or further report under this Part of this Act in which he is named and criticised by a Local Commissioner.

(6) Section 25(4) and (5) above do not apply to this section."

(2) This section shall not have effect in relation to a report made before the coming into force of section 26 above.

## **29 Consideration of adverse reports: Scotland**

(1) The following section shall be inserted after section 29 of the Local Government (Scotland) Act 1975—

### **"29A Consideration of adverse reports**

(1) Subject to subsection (3) below, any power of an authority to have their functions discharged by any person or body of persons acting for the authority shall, as respects the consideration of a further report of the Commissioner under section 29(2A) of this Act, be subject to the restriction that, if it is proposed to take no action on, or not the action recommended in, the report, consideration of the report shall be referred to the authority.

(2) Consideration of a further report of the Commissioner under section 29(2A) of this Act by—

- (a) any such committee as is mentioned in section 23(2) of this Act; or
- (b) an education committee appointed under section 124 of the Act of 1973;

shall be subject to a corresponding restriction.

(3) The restriction imposed by subsections (1) and (2) above does not apply where the report recommends action to be taken by a joint committee—

- (a) established under section 56 of the Act of 1973 or under paragraph 7 of Schedule 10 or paragraph 6 of Schedule 20 to that Act (local authority, education and social work joint committees); or
- (b) referred to in paragraph (a), (b), or (e) of section 23(2) of this Act (fire, police and local government and teachers' superannuation joint committees).

(4) If an authority considering a further report of the Commissioner under section 29(2A) of this Act take into consideration a report by a person or body with an interest in the Commissioner's report, they shall not conclude their consideration of the Commissioner's report without also having taken into consideration a report by a person or body with no interest in the Commissioner's report.

(5) No member of an authority to which this Part of this Act applies or of a committee mentioned in subsection (2) or (3) above shall vote on any question with respect to a report or further report under this Part of this Act in which he is named and criticised by the Commissioner."

- (2) This section shall not have effect in relation to a report made before the coming into force of section 27 above.

### **30 Declaration of acceptance of office of councillor etc**

- (1) Before section 34 of the Local Government (Scotland) Act 1973 there shall be inserted the following section—

#### *“Acceptance of Office*

##### **33A Declaration of acceptance of office of councillor**

- (1) A person elected to office as a councillor of a local authority shall not, unless—
- (a) he has made a declaration of acceptance of office in a form prescribed by an order made by the Secretary of State; and
  - (b) the declaration has within two months from the day of the election been delivered to the proper officer of the local authority,
- act in the office except for the purpose of taking such a declaration.
- (2) If such a declaration is not made and delivered to the proper officer within the appointed time, the office of the person elected shall at the expiration of that time become vacant.
- (3) The declaration shall be made before either—
- (a) two members of the local authority to which the declarant is elected; or
  - (b) the proper officer of the local authority; or
  - (c) the sheriff; or
  - (d) a justice of the peace.
- (4) Any person before whom a declaration is authorised to be made under this section may take the declaration.”
- (2) In section 83 of the Local Government Act 1972 (declaration of acceptance of office) in subsection (1) and subsection (4), for the words “rules under section 42 above” there shall be substituted the words “an order made by the Secretary of State”.

### **31 National Code of Local Government Conduct**

- (1) The Secretary of State, for the guidance of members of local authorities, may issue a code of recommended practice as regards the conduct of members of such authorities to be known as the National Code of Local Government Conduct.
- (2) The Secretary of State may revise or withdraw a code issued under this section.
- (3) The Secretary of State, before issuing, revising or withdrawing a code, shall consult—
- (a) as respects England and Wales, such representatives of local government, and
  - (b) as respects Scotland, such associations of local authorities,
- as appear to him to be appropriate.

- (4) A code shall not be issued unless a draft of it has been laid before and approved by a resolution of each House of Parliament.
- (5) Where the Secretary of State proposes to revise a code, he shall lay a draft of the proposed alterations before each House of Parliament and—
  - (a) he shall not make the revision until after the expiration of the period of 40 days beginning with the day on which the draft is laid (or, if copies are laid before each House of Parliament on different days, with the later of those days); and
  - (b) if within that period either House resolves that the alterations be withdrawn, he shall not proceed with the proposed alterations (but without prejudice to the laying of a further draft).
- (6) In reckoning any period of 40 days for the purposes of subsection (5) above no account shall be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.
- (7) The form of declaration of acceptance of office under section 83 of the Local Government Act 1972 or section 33A of the Local Government (Scotland) Act 1973 may include an undertaking by the declarant to be guided by the National Code of Local Government Conduct in the performance of his functions.
- (8) In this section—
  - “local authority” means—
    - (a) as respects England and Wales, a county council, a district council, a London borough council, a parish council, a community council, the Common Council of the City of London or the Council of the Isles of Scilly;
    - (b) as respects Scotland, a regional, islands or district council or a joint board or joint committee within the meaning of section 235(1) of the Local Government (Scotland) Act 1973; and
  - “member”, in relation to a local authority, includes any person who, whether or not a member of the authority, is a member of a committee or sub-committee of the authority or of any joint committee of theirs.

## **32 Anonymity in reports on investigations**

- (1) In section 30 of the Local Government Act 1974 (reports on investigations by Local Commissioners)—
  - (a) in subsection (3) (report only to identify a person if the Local Commissioner thinks it necessary), after the words “shall not” there shall be inserted the words “, except where subsection (3A) below applies,”; and
  - (b) the following subsection shall be inserted after subsection (3)—
    - “(3A) Where the Local Commissioner is of the opinion—
      - (a) that action constituting maladministration was taken which involved a member of the authority concerned, and
      - (b) that the member’s conduct constituted a breach of the National Code of Local Government Conduct,then, unless the Local Commissioner is satisfied that it would be unjust to do so, the report shall name the member and give particulars of the breach.”

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- (2) In section 28 of the Local Government (Scotland) Act 1975 (reports on investigations by Commissioner)—
- (a) in subsection (3) (report only to identify a person if the Commissioner thinks it necessary), after the words “shall not” there shall be inserted the words “, except where subsection (3A) below applies,”; and
  - (b) the following subsection shall be inserted after subsection (3)—
 

“(3A) Where the Commissioner is of the opinion—

    - (a) that action constituting maladministration was taken which involved a member of the authority concerned, and
    - (b) that the member’s conduct constituted a breach of the National Code of Local Government Conduct,

then, unless the Commissioner is satisfied that it would be unjust to do so, the report shall name the member and give particulars of the breach.”

### PART III

#### ECONOMIC DEVELOPMENT AND DISCRETIONARY EXPENDITURE BY LOCAL AUTHORITIES

### 33 Promotion of economic development

- (1) Subject to sections 34 and 35 below, the functions of every relevant authority shall include the taking of such steps as they may from time to time consider appropriate for promoting the economic development of their area.
- (2) Subject to those sections and without prejudice to any other provision made by or under this Act, those steps may include participation in and the encouragement of, and provision of financial and other assistance for—
  - (a) the setting up or expansion of any commercial, industrial or public undertaking—
    - (i) which is to be or is situated in the authority’s area; or
    - (ii) the setting up or expansion of which appears likely to increase the opportunities for employment of persons living in that area;
  - and
  - (b) the creation or protection of opportunities for employment with any such undertaking or with any commercial, industrial or public undertaking opportunities for employment with which have been or appear likely to be made available to persons living in that area.
- (3) For the purposes of this section a relevant authority shall be treated as providing financial assistance to any person if they do or agree to do any of the following, that is to say—
  - (a) make a grant to that person;
  - (b) make a loan to that person or provide him with any other form of credit;
  - (c) guarantee the performance of any of that person’s obligations;
  - (d) indemnify that person in respect of any liability, loss or damage;
  - (e) invest in that person’s undertaking, in the case of a body corporate, by acquiring share or loan capital in that body or otherwise;

- (f) provide that person with any property, services or other financial benefit (including the remission in whole or in part of any liability or obligation) for no consideration or for a consideration which does not satisfy such conditions as may be specified in regulations made by the Secretary of State;
  - (g) join with any other person in doing anything falling within paragraphs (a) to (f) above;
  - (h) enter into such other transaction, in the nature of anything falling within paragraphs (a) to (g) above, as may be specified in regulations made by the Secretary of State.
- (4) Regulations under this section may contain such incidental provision and such supplemental, consequential and transitional provision in connection with their other provisions as the Secretary of State considers appropriate.
- (5) In this section and sections 34 and 35 below—
  - “financial year” means the twelve months ending with 31st March;
  - “relevant authority” means the council of any county, district or London borough, the Common Council of the City of London in its capacity as a local authority or the Council of the Isles of Scilly.

#### **34 Restrictions on promotion of economic development**

- (1) The powers of a relevant authority by virtue of section 33 above, and their powers by virtue of other enactments, shall not include power, for the promotion of the economic development of their area, to take any such steps as may be specified or described for the purposes of this section in regulations made by the Secretary of State.
- (2) Without prejudice to the generality of subsection (1) above, the Secretary of State may by regulations impose such conditions, and such other restrictions, as may be specified in or determined under the regulations on the exercise, for the purpose of promoting the economic development of their area, of any power of a relevant authority by virtue of section 33 above or any other enactment to provide financial assistance to any person.
- (3) The Secretary of State may by order made by statutory instrument impose such a financial limit as may be specified in or determined under the order on the following expenditure, that is to say, such expenditure as—
  - (a) is or is of a description so specified or determined; and
  - (b) by virtue of section 33 above or any other enactment is incurred in any financial year for the purpose of promoting the economic development of their area by a relevant authority so specified or determined.
- (4) A statutory instrument containing an order under subsection (3) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) Regulations under this section may contain such incidental provision and such supplemental, consequential and transitional provision in connection with their other provisions as the Secretary of State considers appropriate.

#### **35 Guidance and consultation about promotion of economic development**

- (1) It shall be the duty of a relevant authority, in determining whether and in what manner to incur any expenditure for the purpose of promoting the economic development of their area, to have regard to such guidance with respect to expenditure for that

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purpose as may have been given by the Secretary of State to that authority, to relevant authorities of a description applicable to that authority or to relevant authorities generally.

- (2) It shall be the duty of a relevant authority, before the beginning of each financial year, to determine whether they will take any steps in that year for the promotion of the economic development of their area.
- (3) Where under subsection (2) above a relevant authority make a determination in relation to any financial year that they will take steps in that year for the promotion of the economic development of their area, it shall be the duty of that authority, before the beginning of that year—
  - (a) to prepare a document setting out their proposals as to the steps to be taken and setting out the other matters mentioned in subsection (4) below;
  - (b) to make that document available—
    - (i) to such bodies as are representative of commercial or industrial undertakings in their area;
    - (ii) to such of the persons carrying on commercial, industrial and public undertakings in their area as they consider appropriate; and
    - (iii) to such other persons as they think it desirable to consult about the proposals contained in it; and
  - (c) to consult the persons to whom the document is made available about the proposals contained in it.
- (4) The other matters which are required to be set out in the document relating to a relevant authority's proposals as to the taking of any steps are—
  - (a) the authority's proposals as to the expenditure to be incurred by them in taking those steps and as to the extent to which that expenditure is to be capital or revenue expenditure and is to be attributable to different proposals;
  - (b) the authority's estimate of any income likely to accrue from the implementation of their proposals; and
  - (c) what the authority intend the implementation of their proposals to achieve.

### **36 Amendments of existing power to incur discretionary expenditure**

- (1) Section 137 of the Local Government Act 1972 (power of local authorities to incur expenditure for certain purposes not otherwise authorised) shall be amended in accordance with subsections (2) to (8) below and, accordingly, after the coming into force of this section, shall have effect as set out in Schedule 2 to this Act.
- (2) In subsection (1), after the words “in the interests of” there shall be inserted “and will bring direct benefit to”; after the words “incur any expenditure” there shall be inserted “(a)” and at the end there shall be added the words “nor
  - (b) unless the direct benefit accruing to their area or any part of it or to all or some of the inhabitants of their area will be commensurate with the expenditure to be incurred”.
- (3) After subsection (1) there shall be inserted the following subsection—
 

“(1A) In any case where—

  - (a) by virtue of paragraph (a) of subsection (1) above, a local authority are prohibited from incurring expenditure for a particular purpose, and



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- (b) the power or duty of the authority to incur expenditure for that purpose is in any respect limited or conditional (whether by being restricted to a particular group of persons or in any other way),  
the prohibition in that paragraph shall extend to all expenditure to which that power or duty would apply if it were not subject to any limitation or condition.”
- (4) Subsections (2A) and (2B) (which relate to the giving of financial assistance to persons carrying on commercial or industrial undertakings) shall cease to have effect and, in subsection (2C), paragraph (a) (which relates to publicity on the promotion of the economic development of the authority’s area) shall also cease to have effect.
- (5) In subsection (3) (contributions permitted to charitable and public service funds etc.),
  - (a) for the words “as aforesaid” there shall be substituted “to the following provisions of this section”;
  - (b) in paragraph (b) after the words “public service” there shall be inserted “(whether to the public at large or to any section of it)”; and
  - (c) at the end of paragraph (c) there shall be added “or by such a person or body as is referred to in section 83(3)(c) of the Local Government (Scotland) Act 1973”.
- (6) In subsection (4) (expenditure not to exceed the product of a 2p rate) for the words following “not exceed” there shall be substituted “the amount produced by multiplying—
  - (a) such sum as is for the time being appropriate to the authority under subsection (4AA) below, by
  - (b) the relevant population of the authority’s area”; and subsection (8) (which relates to the computation of a 2p rate) shall cease to have effect.
- (7) After subsection (4) there shall be inserted the following subsections—
  - “(4AA) For the purposes of subsection (4)(a) above, except in so far as the Secretary of State by order specifies a different sum in relation to an authority of a particular description,—
    - (a) the sum appropriate to a county council or the council of a non-metropolitan district is £2.50;
    - (b) the sum appropriate to a metropolitan district council, a London borough council or the Common Council is £5.00; and
    - (c) the sum appropriate to a parish or community council is £3.50.
  - (4AB) For the purposes of subsection (4)(b) above the relevant population of a local authority’s area shall be determined in accordance with regulations made by the Secretary of State; and a statutory instrument containing such regulations shall be subject to annulment in pursuance of a resolution of the House of Commons.”
- (8) In subsection (4B) (amounts deductible in determining expenditure under the section) for paragraph (a) there shall be substituted the following paragraph—
  - “(a) the amount of any expenditure which forms part of the authority’s gross expenditure for that year under this section and in respect of which any grant has been or is to be paid under any enactment by

a Minister of the Crown, within the meaning of the Ministers of the Crown Act 1975 (whether or not the grant covers the whole of the expenditure)”.

- (9) In section 83(3) of the Local Government (Scotland) Act 1973 (contributions permitted to charitable and public service funds etc.), at the end of paragraph (c) there shall be added “or by such a person or body as is referred to in section 137(3)(c) of the Local Government Act 1972”.

### **37 Conditions of provision of financial assistance**

After section 137 of the Local Government Act 1972 there shall be inserted the following section—

#### **“137A Financial assistance to be conditional on provision of information**

- (1) If in any financial year a local authority provides financial assistance—
  - (a) to a voluntary organisation, as defined in subsection (2D) of section 137 above, or
  - (b) to a body or fund falling within subsection (3) of that section,
 and the total amount so provided to that organisation, body or fund in that year equals or exceeds the relevant minimum, then, as a condition of the assistance, the authority shall require the organisation, body or fund, within the period of twelve months beginning on the date when the assistance is provided, to furnish to the authority a statement in writing of the use to which that amount has been put.
- (2) In this section “financial assistance” means assistance by way of grant or loan or by entering into a guarantee to secure any money borrowed and, in relation to any financial assistance,—
  - (a) any reference to the amount of the assistance is a reference to the amount of money granted or lent by the local authority or borrowed in reliance on the local authority’s guarantee; and
  - (b) any reference to the date when the assistance is provided is a reference to the date on which the grant or loan is made or, as the case may be, on which the guarantee is entered into.
- (3) The relevant minimum referred to in subsection (1) above is £2,000 or such higher sum as the Secretary of State may by order specify.
- (4) It shall be a sufficient compliance with a requirement imposed by virtue of subsection (1) above that there is furnished to the local authority concerned an annual report or accounts which contain the information required to be in the statement.
- (5) A statement (or any report or accounts) provided to a local authority in pursuance of such a requirement shall be deposited with the proper officer of the authority.
- (6) In this section “local authority” includes the Common Council.”

### **38 Information etc. on individuals' rights**

- (1) Section 142 of the Local Government Act 1972 (provision of information, etc.) shall be amended as follows.
- (2) There shall be inserted after subsection (2)—
  - “(2A) A local authority may assist voluntary organisations to provide for individuals—
    - (a) information and advice concerning those individuals' rights and obligations; and
    - (b) assistance, either by the making or receiving of communications or by providing representation to or before any person or body, in asserting those rights or fulfilling those obligations.”

## **PART IV**

### **REVENUE ACCOUNTS AND CAPITAL FINANCE OF LOCAL AUTHORITIES**

#### *Introductory*

### **39 Application of Part IV**

- (1) For financial years beginning on or after 1st April 1990, this Part has effect with respect to the finances of the following authorities (in this Part referred to as “local authorities”)—
  - (a) a county council;
  - (b) a district council;
  - (c) a London borough council;
  - (d) the Common Council of the City of London;
  - (e) the Council of the Isles of Scilly;
  - (f) an authority established under section 10 of the Local Government Act 1985 (waste disposal authorities);
  - (g) a joint authority established by Part IV of that Act (police, fire services, civil defence and transport);
  - (h) a joint or special planning board constituted for a National Park by an order under paragraph 1 or paragraph 3 of Schedule 17 to the Local Government Act 1972;
  - (i) the Broads Authority;
  - (j) a combined police authority established by an amalgamation scheme under the Police Act 1964; and
  - (k) any other body prescribed by regulations under subsection (3) below.
- (2) The reference in subsection (1)(d) above to the Common Council of the City of London is a reference to that Council in their capacity as a local authority, a police authority or a port health authority.
- (3) The Secretary of State may by regulations prescribe for the purposes of subsection (1)(k) above any body which is (or any class of bodies each of which is)—

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- (a) a levying body, within the meaning of section 74 of the Local Government Finance Act 1988;
  - (b) a body to which section 75 of that Act applies (bodies having power to issue special levies);
  - (c) a body to which section 118 of that Act applies; or
  - (d) a precepting authority, as defined in section 144(2) of that Act.
- (4) Regulations under subsection (3) above may provide that, in relation to a body prescribed by the regulations, the following provisions of this Part shall have effect subject to such modifications as may be specified in the regulations.
- (5) For the purposes of the application of this Part, the Secretary of State may by order make provision for treating things done by or to—
  - (a) a company which, in accordance with Part V of this Act, is under the control of a local authority, or
  - (b) a company which, in accordance with that Part, is for the time being subject to the influence of an authority, or
  - (c) a trust to which, by virtue of an order under section 72 below, the provisions of section 69 below are applicable, or
  - (d) a Passenger Transport Executive and any company which, in accordance with that Part, is either under the control or for the time being subject to the influence of such an Executive,

in such cases and to such extent as may be provided in the order as if they were done by or to the local authority specified or determined in accordance with the order; and, where an order so provides in relation to a local authority, that authority together with any companies and Executive concerned are in subsection (6) below referred to as members of a local authority group.
- (6) Without prejudice to the generality of subsection (5) above, an order under that subsection—
  - (a) may provide for the application of the provisions of this Part to the members of a local authority group subject to such modifications as may be specified in the order;
  - (b) may make provision as to the way in which dealings between members of a local authority group and changes in the capitalisation or capital structure of any company in a local authority group are to be brought into account for the purposes of this Part; and
  - (c) may contain such incidental, supplementary and transitional provisions as the Secretary of State considers appropriate.
- (7) The power to make an order under subsection (5) above—
  - (a) shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament; and
  - (b) may make different provision in relation to different cases or descriptions of case.
- (8) This Part has effect in place of the provisions of Part VIII of the Local Government, Planning and Land Act 1980.

## **40 Capital purposes**

- (1) References in this Part to expenditure for capital purposes shall be construed in accordance with this section.
- (2) Subject to subsections (5) and (6) below, the following expenditure (relating to tangible assets) is expenditure for capital purposes, namely, expenditure on—
  - (a) the acquisition, reclamation, enhancement or laying out of land, exclusive of roads, buildings and other structures;
  - (b) the acquisition, construction, preparation, enhancement or replacement of roads, buildings and other structures; and
  - (c) the acquisition, installation or replacement of movable or immovable plant, machinery and apparatus and vehicles and vessels.
- (3) For the purposes of subsection (2) above, “enhancement”, in relation to any asset, means the carrying out of works which are intended—
  - (a) to lengthen substantially the useful life of the asset; or
  - (b) to increase substantially the open market value of the asset; or
  - (c) to increase substantially the extent to which the asset can or will be used for the purposes of or in connection with the functions of the local authority concerned;but expenditure on the enhancement of an asset shall not be regarded as expenditure for capital purposes unless it should be so regarded in accordance with proper practices.
- (4) Subject to subsection (5) below, the following expenditure, in so far as it is not expenditure on approved investments, is expenditure for capital purposes, namely, expenditure on—
  - (a) the making of advances, grants or other financial assistance to any person towards expenditure incurred or to be incurred by him on the matters mentioned in paragraphs (a) to (c) of subsection (2) above or on the acquisition of investments; and
  - (b) the acquisition of share capital or loan capital in any body corporate.
- (5) The Secretary of State may by regulations provide—
  - (a) that expenditure which, apart from the provision made by the regulations, would not be expenditure for capital purposes shall be such expenditure; or
  - (b) that expenditure which, apart from the provision made by the regulations, would be expenditure for capital purposes shall not be such expenditure.
- (6) Notwithstanding anything in the preceding provisions of this section, if the Secretary of State so directs, expenditure which—
  - (a) is of a description or for a purpose specified in the direction, and
  - (b) has been or is to be incurred by a particular local authority, and
  - (c) does not exceed such amount as is specified in the direction, and
  - (d) was or will be incurred during a period specified in the direction,may be treated by the authority concerned as expenditure for capital purposes.

### *Charge of expenditure to revenue accounts*

#### **41 Expenditure to be charged to revenue account**

- (1) All expenditure incurred by a local authority, other than expenditure excluded by section 42 below, must be charged to a revenue account of the authority and unless, in accordance with proper practices (exclusive of this subsection), it is appropriate to charge some or all of any particular item of expenditure to a revenue account for an earlier or a later financial year, the expenditure shall be charged to a revenue account of the authority for the year in which it is incurred.
- (2) In relation to a local authority, any reference to a revenue account is a reference to one of the following accounts for a financial year of the authority, namely—
  - (a) a revenue account which the authority are required to keep by virtue of any enactment;
  - (b) a revenue account which the authority are required to keep in order to comply with proper practices; or
  - (c) any other revenue account which the authority decide to keep in accordance with proper practices.
- (3) The reference in subsection (1) above to expenditure incurred by a local authority in any financial year includes the following (whether or not giving rise to actual payments)—
  - (a) any amount which does not form part of the authority's capital receipts and which is set aside for the year by the authority as provision to meet credit liabilities, otherwise than by virtue of any of subsections (2) to (4) of section 63 below; and
  - (b) any other amount which is set aside for the year by the authority as reasonably necessary for the purpose of providing for any liability or loss which is likely or certain to be incurred but is uncertain as to the amount or the date on which it will arise (or both);

and the reference in subsection (5) below to expenditure incurred by a local authority shall be construed in accordance with this subsection.
- (4) Subsection (2) above has effect not only for the purposes of this Act but also for the purposes of—
  - (a) any enactment passed after or in the same Session as this Act; and
  - (b) any earlier enactment which is amended by this Act or by any such enactment as is referred to in paragraph (a) above.
- (5) Nothing in this section or the following provisions of this Part shall permit an authority to charge to a revenue account which they are required to keep by virtue of Part VI of this Act or any other enactment any expenditure incurred by a local authority which could not otherwise be so charged.

#### **42 Expenditure excluded from section 41(1)**

- (1) Expenditure falling within subsection (2) below is excluded from the obligation in section 41(1) above but, if it is consistent with proper practices and the authority so wish, any such expenditure may be charged to a revenue account of the authority for the financial year in which it is incurred or an earlier or later financial year.

- (2) Subject to subsection (4) below, the expenditure referred to in subsection (1) above is as follows—
- (a) expenditure arising from the discharge of any liability of the authority under a credit arrangement, other than an arrangement excluded by regulations under paragraph 11 of Schedule 3 to this Act;
  - (b) expenditure arising from the discharge of any liability of the authority in respect of money borrowed by the authority, other than a liability in respect of interest;
  - (c) expenditure which, in reliance on a credit approval, the authority have determined under section 56(1)(a) below is not to be chargeable to a revenue account of the authority;
  - (d) expenditure on making approved investments;
  - (e) expenditure consisting of the application or payment of capital receipts as mentioned in subsections (7) to (9) of section 59 below;
  - (f) expenditure which is met out of the usable part of capital receipts, in accordance with section 60(2) below;
  - (g) expenditure for capital purposes which the authority determine is, or is to be, reimbursed or met out of money provided, or to be provided, by any other person, excluding grants from a Community institution;
  - (h) expenditure in respect of payments out of a superannuation fund which the authority are required to keep by virtue of the Superannuation Act 1972; and
  - (i) expenditure in respect of payments out of a trust fund which is held for charitable purposes and of which the authority are a trustee.
- (3) A determination under subsection (2)(g) above may not be made later than 30th September in the financial year following that in which the expenditure in question is incurred.
- (4) Regulations made by the Secretary of State may amend subsection (2) above—
- (a) by adding a description of expenditure specified in the regulations to the expenditure falling within that subsection; or
  - (b) by removing a description of expenditure specified in the regulations from the expenditure falling within that subsection (whether the expenditure so specified was within that subsection as originally enacted or was added by virtue of this subsection).
- (5) Where, by virtue of subsection (1) above, expenditure of any description is excluded from the obligation in section 41(1) above, it shall also be excluded from any requirement arising under any enactment (including an enactment in Part VI of this Act) under which the expenditure is required to be charged to a revenue account or any particular revenue account; but if—
- (a) an authority decide that expenditure of that description should be charged to a revenue account as mentioned in subsection (1) above, and
  - (b) under any such requirement that expenditure (apart from this subsection) would have to be charged to a particular revenue account,
- that expenditure may be charged only to that revenue account.

## *Borrowing*

### **43      Borrowing powers**

- (1) Subject to the following provisions of this Part, as part of the proper management of their affairs, a local authority may borrow money for any purpose relevant to their functions under any enactment.
- (2) Except with the approval of the Secretary of State given with the consent of the Treasury, a local authority may not borrow money in any manner other than—
  - (a) by overdraft or short term from the Bank of England or from a body or partnership which, at the time the borrowing is undertaken, is an authorised institution within the meaning of the Banking Act 1987; or
  - (b) from the National Debt Commissioners or from the Public Works Loan Commissioners; or
  - (c) by means of a loan instrument;
 and in paragraph (a) above borrowing “short term” shall be construed in accordance with section 45(6) below.
- (3) In the exercise of the powers conferred by paragraphs (a) to (c) of subsection (2) above, a local authority may not, without the consent of the Treasury, borrow from a lender outside the United Kingdom or otherwise than in sterling.
- (4) Subject to any provision made by regulations under subsection (5) below, for the purposes of this Part, a loan instrument is any document which, directly or by reference to any other document,—
  - (a) contains an acknowledgment (by the borrower, the lender or both) that a loan has been made to the local authority concerned or that, in connection with the provision of funds to the authority, a payment or repayment is due from the authority; and
  - (b) states the dates on which the authority are to make payments or repayments; and
  - (c) states the amount of each of those payments or repayments or the method by which that amount is to be calculated; and
  - (d) specifies the means, if any, by which the rights or obligations under the instrument are transferable; and
  - (e) except in the case of an instrument which is transferable by delivery, specifies the name or description of the person to whom payments or repayments are due; and
  - (f) in the case of an instrument issued by two or more local authorities acting jointly, states what proportion of the payments or repayments due are the responsibility of each of the authorities concerned.
- (5) With the consent of the Treasury, the Secretary of State may make regulations—
  - (a) regulating the terms of loan instruments and the manner of their issue, transfer or redemption;
  - (b) restricting the issue of instruments which are transferable by delivery;
  - (c) regulating the manner in which any payments or repayments are to be made to the holder of the instrument; and
  - (d) making provision for the custody and, where appropriate, eventual destruction of documents relating to loan instruments;



and any document which, at the time it comes into being, does not comply with any provision then made under paragraphs (a) to (c) above is not a loan instrument for the purposes of this Part.

- (6) Any approval given by the Secretary of State under subsection (2) above and any consent given by the Treasury under subsection (3) above may be given generally or in a particular case or to authorities of a particular description or by reference to borrowing or securities of a particular description and may be given subject to conditions.
- (7) In so far as any local authority have power under any private or local Act to borrow money (whether for general or specific purposes), any such power shall cease to have effect for financial years beginning on or after 1st April 1990.
- (8) Subject to subsection (7) above, subsections (2) to (6) above apply to all borrowing powers for the time being available to a local authority under any enactment, whenever passed.

#### **44      Borrowing limits etc**

- (1) A local authority may not at any time borrow an amount which would cause the total of—
  - (a) the amount outstanding at that time by way of principal of money borrowed by the authority, and
  - (b) the aggregate cost (as determined below) at that time of the credit arrangements entered into by the authority, other than arrangements excluded by regulations under paragraph 11 of Schedule 3 to this Act,to exceed the aggregate credit limit for the time being applicable to the authority by virtue of section 62 below.
- (2) The Secretary of State may by regulations make provision, in the interests of prudent financial management, regulating borrowing by local authorities; and a local authority may not borrow to any extent or in any manner which would contravene any provision of the regulations.
- (3) A local authority may not borrow any amount which would cause any limit for the time being determined by the authority under section 45 below to be exceeded.
- (4) References in this section and sections 45 to 47 below to borrowing by an authority are references to borrowing not only under section 43 above but also under any other power for the time being available to the authority under any enactment, whenever passed.
- (5) For the purposes of subsection (1) above, the temporary use by a local authority for a purpose other than that of the fund in question of money forming part of such a superannuation fund or trust fund as is referred to in paragraph (h) or paragraph (i) of subsection (2) of section 42 above shall be treated as borrowing.
- (6) A person lending money to a local authority shall not be bound to enquire whether the authority have power to borrow the money and shall not be prejudiced by the absence of any such power.

#### **45      The authority's own limits**

- (1) For the purposes of this Part, for each financial year every local authority shall determine—
  - (a) an amount of money (in this Part referred to as “the overall borrowing limit”) which is for the time being the maximum amount which the authority may have outstanding by way of borrowing;
  - (b) an amount of money (in this Part referred to as “the short-term borrowing limit”), being a part of the overall borrowing limit, which is for the time being the maximum amount which the authority may have outstanding by way of short term borrowing; and
  - (c) a limit on the proportion of the total amount of interest payable by the authority which is at a rate or rates which can be varied by the person to whom it is payable or which vary by reference to any external factors.
- (2) Subject to subsection (3) below, the duty to determine the limits referred to in subsection (1) above shall be performed before the beginning of the financial year to which the limits are to relate.
- (3) Where a local authority have determined a limit for a financial year under subsection (1) above, the authority may at any time (whether before or after the beginning of that year) vary that limit by making a new determination thereof.
- (4) Section 101 of the Local Government Act 1972 (arrangements for discharge of functions of local authorities by committees, officers etc.) shall not apply to the duty to make a determination under subsection (1) above of any limit or to the power to vary a limit under subsection (3) above.
- (5) Without prejudice to subsection (4) above, in section 101(6) of the Local Government Act 1972 (which provides that certain functions, including borrowing, shall be discharged only by the authority) the words “or borrowing money” shall be omitted.
- (6) For the purposes of subsection (1)(b) above, a local authority borrow money short term if the sum borrowed is repayable—
  - (a) without notice; or
  - (b) at less than twelve months notice; or
  - (c) within twelve months of the date of the borrowing.

#### **46      Register of loan instruments and certain existing loans**

- (1) Every local authority shall maintain a register giving particulars of all the loans in respect of which loan instruments are issued by or to the authority on or after 1st April 1990 and, if they think it appropriate, a local authority may appoint as a registrar for some or all of the purposes of such a register a person who is neither an officer nor any other employee of the authority.
- (2) In the register required to be maintained by a local authority under this section, the authority shall, not later than 30th September 1990, enter particulars of all outstanding loans in respect of which any payment or repayment falls to be made by the authority (whether or not any loan instruments have been issued), other than those resulting from borrowing as mentioned in paragraph (a) or paragraph (b) of subsection (2) of section 43 above; and, for this purpose, an “outstanding loan” is one which was made before 1st April 1990 and in respect of which any payment or repayment falls to be made on or after that date.

- (3) Subject to the following provisions of this section, a register required to be maintained under this section shall be in such form as the authority concerned consider appropriate; but that form must be such that the register is, or is capable of being reproduced, in legible form.
- (4) A register maintained under this section shall contain, with respect to each loan of which particulars are required to be registered,—
  - (a) except in the case of a loan in respect of which there has been issued an instrument (whether or not being a loan instrument) transferable by delivery, the name or description, and the address, of the person to whom payments or repayments are due;
  - (b) the dates on which the payments or repayments are to be made; and
  - (c) the amount of each of those payments or repayments or the method by which that amount is to be calculated.
- (5) A local authority may remove from a register maintained under this section particulars of any loan in respect of which no more payments or repayments fall to be made.
- (6) With the consent of the Treasury, the Secretary of State may make regulations—
  - (a) generally with respect to the keeping of a register required to be maintained under this section;
  - (b) modifying all or any of the particulars specified in paragraphs (a) to (c) of subsection (4) above; and
  - (c) specifying additional particulars which are to be entered in a register maintained under this section.
- (7) A copy of an entry in a register maintained under this section which is certified by a registrar of the register and purports to show particulars entered pursuant to subsection (4) or subsection (6) above shall be prima facie evidence of the matters specified in the entry.
- (8) A certification by a registrar of a register maintained under this section of any instrument of transfer of a loan instrument is to be taken as a representation by him to any person acting on the faith of the certification that there have been produced to the registrar such documents as on their face show a prima facie title to the loan instrument in the transferor named in the instrument of transfer; but such a certification shall not be taken as a representation that the transferor has any title to the loan instrument.
- (9) If—
  - (a) the name of any person is, without sufficient cause, entered in or omitted from a register maintained under this section, or
  - (b) default is made or unnecessary delay takes place in making any entry required to be made in such a register,the person aggrieved may apply to the High Court or a county court for rectification of the register.
- (10) Where an application is made under subsection (9) above, the court—
  - (a) may refuse the application or order rectification of the register;
  - (b) may decide any question relating to the title of a person who is a party to the application to have his name entered in or omitted from the register; and
  - (c) generally may decide any question necessary or expedient to be decided for rectification of the register.

#### **47      Security for money borrowed etc**

- (1) All money borrowed by a local authority (whether before or after the coming into force of this section), together with any interest thereon, shall be charged indifferently on all the revenues of the authority.
- (2) Subject to subsection (3) below, all securities created by a local authority shall rank equally without any priority.
- (3) Subsection (2) above does not affect any priority existing at, or any right to priority conferred by a security created before, 1st June 1934.
- (4) If at any time any principal or interest due in respect of any borrowing by a local authority remains unpaid for a period of two months after demand in writing, then, subject to subsection (5) below, the person entitled to the sum due may, without prejudice to any other remedy, apply to any court having jurisdiction in respect of a claim for that sum for the appointment of a receiver; and, if it thinks fit, the court may appoint a receiver on such terms and with such powers as the court thinks fit.
- (5) No application may be made under subsection (4) above unless the sum due in respect of the borrowing concerned amounts to not less than £5,000 or such other amount as may from time to time be prescribed for the purposes of this subsection by regulations made by the Secretary of State.
- (6) The court to whom an application is made under subsection (4) above may confer upon the receiver any such powers of collecting, receiving and recovering the revenues of the local authority and of issuing levies and precepts and setting, collecting and recovering community charges as are possessed by the local authority.
- (7) Except as provided by subsection (1) above, a local authority may not mortgage or charge any of their property as security for money borrowed or otherwise owing by them; and any security purporting to be given in contravention of this subsection shall be unenforceable.

#### *Credit arrangements*

#### **48      Credit arrangements**

- (1) Subject to the following provisions of this section, a local authority shall be taken for the purposes of this Part to have entered into a credit arrangement—
  - (a) in any case where they become the lessees of any property (whether land or goods); and
  - (b) in any case (not falling within paragraph (a) above) where, under a single contract or two or more contracts taken together, it is estimated by the authority that the value of the consideration which the authority have still to give at the end of a relevant financial year for or in connection with the provision to the authority of any land, goods or services or any other kind of benefit is greater than the value of the consideration (if any) which the authority were still to receive immediately before the beginning of that financial year; and
  - (c) in any case where the authority enter into a transaction of a description for the time being prescribed for the purposes of this section by regulations made by the Secretary of State;

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and, in any such case, the “credit arrangement” is the lease, the single contract or, as the case may be, the two or more contracts taken together.

- (2) The estimate required to be made under paragraph (b) of subsection (1) above shall be made at the time the contract or, as the case may be, the later or last of the contracts constituting the credit arrangement is entered into; and the reference in that paragraph to a relevant financial year is a reference to a financial year which begins after the contract or, as the case may be, the first of the contracts constituting the arrangement was entered into.
- (3) Subject to section 52 below, references in this Part, other than this section, to a credit arrangement do not apply to a credit arrangement which comes into being before 1st April 1990; and for the purpose of this Part a credit arrangement comes into being—
  - (a) where subsection (1)(a) above applies, at the time the local authority become the lessees;
  - (b) where subsection (1)(b) above applies, at the time the contract or, as the case may be, the later or latest of the contracts constituting the arrangement is entered into; and
  - (c) where subsection (1)(c) above applies, at the time the authority enter into the transaction concerned or such other time as may be specified in the regulations concerned.
- (4) Where a contract constitutes, or two or more contracts taken together constitute, a credit arrangement, no account shall be taken under this section of any later contract which has the effect of varying the effect of the contract or, as the case may be, of the two or more contracts taken together.
- (5) A contract is not a credit arrangement to the extent that it is a contract under which a local authority borrows money; and a lease or contract which is excluded from this section by regulations made by the Secretary of State is not a credit arrangement.
- (6) It is immaterial for the purposes of this section whether the consideration given or received by a local authority under any contract is given to or received from the person by whom the land, goods, services or other benefit are in fact provided to the authority; and for the purposes of this section, and any of the following provisions of this Part relating to credit arrangements, in any case where the consideration under a contract consists, in whole or in part,—
  - (a) of an undertaking to do or to refrain from doing something at a future time (whether specified or not), or
  - (b) of a right to do or to refrain from doing something at such a future time,that consideration shall be regarded as neither given nor received until the undertaking is performed or, as the case may be, the right is exercised.
- (7) Where the consideration under a contract consists, in whole or in part, of an option, the estimate required to be made under subsection (1)(b) above shall be made—
  - (a) on the assumption that the option will be exercised or, if the option could be exercised in different ways, on the assumption that it will be exercised in each of those ways, and
  - (b) on the assumption that the option will not be exercised,and if, on any of those assumptions, the contract would on those estimates constitute, alone or together with one or more other contracts, a credit arrangement, it shall be regarded as doing so regardless of whether the option is or is not in fact exercised;

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and in this subsection “option” includes any right which is exercisable or not at the discretion of a party to the contract.

- (8) If an existing contract is varied and the variation does not in law itself constitute a contract, it shall be regarded as such for the purposes of this section and, accordingly, subject to subsection (4) above, the existing contract and the variation shall be regarded as two contracts to be taken together.

#### **49 Initial and subsequent cost of credit arrangements**

- (1) Subject to subsection (3) and section 52 below, for the purposes of this Part the initial cost of a credit arrangement is the amount which, at the time the arrangement comes into being, the local authority estimate will be the aggregate of—
- (a) any consideration which falls to be given by the authority under the arrangement in the financial year in which it comes into being; and
  - (b) the value of the consideration falling to be given by the authority under the arrangement in any subsequent financial year, determined in accordance with subsection (2) below.
- (2) For each subsequent financial year referred to in subsection (1)(b) above, the value of the consideration falling to be given in that year shall be determined by the formula—

$$\frac{x}{\left(1 + \frac{r}{100}\right)^n}$$

where—

“x” is the amount of the consideration which the authority estimate will be given by them under the arrangement in that financial year;

“r” is the percentage rate of discount prescribed for the financial year in which the arrangement came into being by regulations made by the Secretary of State for the purposes of this section; and

“n” is the financial year in which the consideration falls to be given expressed as a year subsequent to the financial year in which the arrangement came into being (so that the first of the subsequent financial years is 1, the next financial year is 2, and so on).

- (3) Subsection (2) above does not apply to a credit arrangement of a description excluded from that subsection by regulations made by the Secretary of State; and, in relation to a credit arrangement which is so excluded, regulations so made shall make provision for the method of calculating the initial cost and the cost of the arrangement at any time.
- (4) Subject to subsection (3) above and sections 51 and 52 below, the cost of a credit arrangement at any time after it has come into being shall be determined in accordance with subsections (1) and (2) above (in like manner as the determination of the initial cost) but on the basis of an estimate made at the time in question and leaving out of account any consideration which has been given by the authority under the arrangement before that time.
- (5) In the application of this section to a credit arrangement which consists, in whole or in part, of a contract, the consideration under which falls within subsection (7) of section 48 above,—

- (a) if the credit arrangement exists only on the basis of one of the assumptions in that subsection, the local authority shall make that assumption for the purposes of this section; and
- (b) if the credit arrangement would exist on the basis of any two or more of those assumptions, the authority shall for the purposes of this section make whichever of those assumptions seems to them most likely.

## **50 Limits on powers to enter into credit arrangements**

- (1) A local authority may not enter into a credit arrangement for any purpose unless, if they incurred expenditure for that purpose, it would be expenditure for capital purposes, and any reference in the following provisions of this Part to “capital purposes”, in relation to a credit arrangement, shall be construed accordingly.
- (2) A local authority may not enter into a credit arrangement unless, at the time the arrangement comes into being, there is available to the authority an amount of credit cover equal to the initial cost of the arrangement.
- (3) For the purposes of this section, each of the following amounts constitutes, in relation to a credit arrangement, an amount of credit cover available to a local authority,—
  - (a) an amount for the time being authorised by a credit approval issued to the authority;
  - (b) an amount of the usable part of capital receipts which, in accordance with a determination under section 60(2) below referring to the arrangement, is applied by the authority as provision to meet credit liabilities; and
  - (c) an amount which, in accordance with a determination of the authority referring to the arrangement, is set aside from a revenue account by the authority as provision to meet credit liabilities (being an amount over and above what they are required so to set aside by virtue of any other provision of this Part).
- (4) A local authority may not enter into a credit arrangement at any time if to do so would at that time cause the total referred to in section 44(1) above to exceed the aggregate credit limit for the time being applicable to the authority by virtue of section 62 below.
- (5) A determination under subsection (3)(c) above may not be made later than 30th September in the financial year following that in which falls the time when there comes into being the credit arrangement for which the credit cover is made available.
- (6) Except in so far as they are applied by section 52 below, the preceding provisions of this section do not apply in relation to a transitional credit arrangement.

## **51 Variation of credit arrangements**

- (1) This section (other than subsection (10) below) applies where the terms of a credit arrangement entered into by a local authority are varied (whether by the making of a new contract or otherwise) in such a way that, if the effect of the variation had been part of the arrangement at the time it came into being, the initial cost would have been greater than it was.
- (2) If, in the case of a credit arrangement falling within subsection (5) of section 49 above,  
—
  - (a) the option in question is exercised in a way different from that which was assumed for the purposes of that section, or

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- (b) it was assumed for the purposes of that section that the option in question would not be exercised but it is in fact exercised,
- the exercise of the option shall be regarded for the purposes of this section as a variation of the terms of the credit arrangement; and if, in such a case, it was assumed for the purposes of section 49 above that the option would be exercised (or would be exercised in a particular way) and it subsequently appears to the local authority that it will not in fact be exercised, the option shall be assumed to have been abandoned and that abandonment shall be regarded for the purposes of this section as a variation of the terms of the credit arrangement.
- (3) A local authority may not at any time agree to such a variation as is mentioned in subsection (1) above if to do so would mean that, immediately after the variation, the total referred to in section 44(1) above would exceed the aggregate credit limit for the time being applicable to the authority by virtue of section 62 below.
- (4) Where a credit arrangement is varied as mentioned in subsection (1) above, the local authority shall secure that there is available to it an amount of credit cover equal to whichever is the less of—
- (a) the difference between the total amount of consideration paid and payable under the arrangement, disregarding the variation and the total amount of the consideration paid and payable under the arrangement as varied; and
  - (b) the difference between the adjusted cost of the arrangement and the credit cover already made available in connection with the arrangement in accordance with section 50 above;
- and subsections (3) and (5) of section 50 above apply for the purposes of this section as they apply for the purposes of that section, except that, in subsection (5), the reference to the time when the arrangement comes into being shall be construed as a reference to the time when it is varied.
- (5) Subject to subsection (7) below, the adjusted cost of the arrangement referred to in subsection (4)(b) above is the aggregate of—
- (a) the consideration which, in the financial year in which the arrangement is varied and in any earlier financial year, has been or falls to be given by the local authority; and
  - (b) the amount which, at the time of the variation, the authority estimate will be the cost of the arrangement, as varied, in each subsequent financial year determined as follows.
- (6) Subject to subsection (7) below, for any subsequent financial year the cost of the arrangement as varied shall be determined by the formula in section 49(2) above but, for this purpose,—
- “x” is the amount of the consideration which the authority estimate will be given by them in that financial year under the arrangement as varied;
  - “r” is the percentage rate of discount for the financial year in which the arrangement is varied, as prescribed by regulations made by the Secretary of State for the purposes of section 49 above;
  - “n” is the financial year in which the consideration falls to be given, expressed as a year subsequent to the financial year in which the arrangement is varied (so that the first of the subsequent financial years is 1, the next is 2, and so on).
- (7) Subsections (5) and (6) above do not apply in relation to a credit arrangement as to which the method of calculating the initial cost and the cost at any time is provided



for by regulations under section 49(3) above; and any adjusted cost or cost which would otherwise fall to be determined in accordance with those subsections shall be determined in accordance with provisions made by the regulations.

- (8) Where a credit arrangement is varied as mentioned in subsection (1) above, the cost of the arrangement at any time after the variation shall be determined in accordance with subsections (5) and (6) above (in like manner as the determination of the adjusted cost) but on the basis of an estimate made at the time in question and leaving out of account any consideration which has been given by the authority under the arrangement before that time.
- (9) If, at any time after the terms of a credit arrangement have been varied as mentioned in subsection (1) above, the terms of the arrangement are again varied, the preceding provisions of this section shall have effect with any necessary modifications and, in particular, as if,—
- (a) the reference in subsection (1) above to the time the arrangement came into being were a reference to the time at which the arrangement was varied (or, as the case may be, last varied) as mentioned in that subsection;
  - (b) the reference in that subsection to the initial cost were a reference to the adjusted cost of the arrangement as so varied (or last varied); and
  - (c) the reference in paragraph (b) of subsection (4) above to the credit cover already made available in accordance with section 50 above included a reference to any additional credit cover made available under that subsection at the time of an earlier variation.
- (10) If at any time the terms of a credit arrangement are varied otherwise than as mentioned in subsection (1) above, then, so far as the variation affects the consideration falling to be paid by the local authority in any year, account shall be taken of the variation in determining the cost of the arrangement at any subsequent time (under subsection (8) above or subsection (3) or subsection (4) of section 49 above) but for other purposes the variation shall be disregarded.

## **52 Transitional credit arrangements**

- (1) Subject to the following provisions of this section, a local authority shall be taken to have entered into a transitional credit arrangement if, applying the rules in section 48(3) above, the arrangement came into being on or after 7th July 1988 and before 1st April 1990; and, except in so far as any provision of this Part otherwise provides, any reference in this Part to a credit arrangement includes a reference to a transitional credit arrangement.
- (2) Notwithstanding that a credit arrangement came into being as mentioned in subsection (1) above it is not a transitional credit arrangement if—
- (a) under the arrangement the local authority concerned became the lessees of any property (whether land or goods) and the arrangement was a credit arrangement by reason only of section 48(1)(a) above; or
  - (b) by virtue of subsection (11) or subsection (12) of section 80 of the Local Government, Planning and Land Act 1980 (valuation etc.) the amount of prescribed expenditure which the authority is to be taken as having paid on entering into the arrangement was nil; or
  - (c) by virtue of regulations under paragraph 4 of Schedule 12 to that Act, any expenditure of the authority under the arrangement was not prescribed expenditure; or

- (d) the arrangement related only to works which, in whole or in part, were carried out before 1st April 1990 and in relation to which, by reason only of regulations under subsection (7) of section 80A of that Act (payment for works), subsection (1) of that section did not apply or, to the extent that the works were carried out on or after that date, would not have applied if they had been carried out before that date.
- (3) For the purpose of the application of sections 49 and 51 above in relation to a transitional credit arrangement—
- (a) such an arrangement shall be taken to have come into being (in the form in which it was on 1st April 1990) on that date (and, accordingly, any consideration given under the arrangement before that date shall be disregarded); and
  - (b) the local authority shall be taken to have made available in connection with the arrangement (and in accordance with section 50 above) an amount of credit cover equal to the cost of the arrangement on 1st April 1990.

### *Credit approvals*

## **53 Basic credit approvals**

- (1) Before the beginning of each financial year, the Secretary of State shall issue to each local authority, in the form of a notice in writing, a credit approval with respect to the authority's credit arrangements and expenditure for capital purposes during that year.
- (2) A credit approval issued under this section (in this Part referred to as a “basic credit approval”) may be nil but, subject to that, shall be expressed as an amount of money.
- (3) A basic credit approval shall have effect only for the financial year in respect of which it is issued and may be limited by excluding from the purposes for which the approval may be used capital purposes of a description specified in the approval.
- (4) Where regulations made by the Secretary of State so require, a basic credit approval shall specify, directly or by reference to tables or other documents specified in the approval, a period (in this Part referred to as the “amortisation period”) during which the authority to whom the approval is issued are required to set aside, from a revenue account, as provision to meet credit liabilities, amounts determined in accordance with the regulations.
- (5) Under subsection (4) above, if the regulations so provide, a basic credit approval may specify different amortisation periods in relation to the use of the approval in respect of credit arrangements and expenditure for capital purposes of different descriptions.

## **54 Supplementary credit approvals**

- (1) Any Minister of the Crown may at any time issue to a local authority, in the form of a notice in writing, a credit approval (in this Part referred to as a “supplementary credit approval”).
- (2) A supplementary credit approval shall be expressed as an amount of money and shall be limited to credit arrangements and expenditure for capital purposes of a description specified in the approval (but, if the Minister concerned considers appropriate, all capital purposes may be so specified).

- (3) A supplementary credit approval shall have effect for such period as is specified in the approval; and where such an approval is issued not more than six months after the end of a financial year, it may specify a period which begins or begins and ends at any time during that financial year.
- (4) Subject to subsection (5) below, subsections (4) and (5) of section 53 above apply in relation to a supplementary credit approval as they apply in relation to a basic credit approval.
- (5) In the case of a supplementary credit approval issued in respect of expenditure which is treated by the authority concerned as expenditure for capital purposes by virtue only of directions under section 40(6) above, the approval must specify an amortisation period and the maximum amortisation period which may be specified shall be seven years.

## **55 Criteria for issuing credit approvals**

- (1) In determining the amount of a basic credit approval or a supplementary credit approval to be issued to a local authority, the Secretary of State or other Minister may have regard, subject to the following provisions of this section, to such factors as appear to him to be appropriate.
- (2) Without prejudice to the generality of subsection (1) above, the Secretary of State or other Minister may, in particular, have regard—
  - (a) to the amount of any grants or contributions which it appears to him that the authority concerned have received and are likely to receive from any person in respect of expenditure incurred by the authority or to be incurred by them before the expiry of the period for which the credit approval is to have effect; and
  - (b) subject to subsection (3) below, to the amount of capital receipts which it appears to him that the authority have received, might reasonably be expected to have received or to receive or are likely to receive before the expiry of the period for which the credit approval is to have effect.
- (3) In determining the amount of a credit approval, the Secretary of State or other Minister shall not take account of capital receipts—
  - (a) to the extent that the authority concerned are required to set aside the receipts as provision for credit liabilities; or
  - (b) to the extent that they are applied or paid as mentioned in subsections (7) to (9) of section 59 below.
- (4) In determining the amount of the basic credit approval or of a supplementary credit approval to be issued to a particular local authority in any financial year, the Secretary of State or other Minister shall not take account of the extent to which it appears to him that the local authority are or are likely to be in a position to finance expenditure for capital purposes from a revenue account.
- (5) In this section “capital receipts” includes sums which constituted capital receipts for the purposes of Part VIII of the Local Government, Planning and Land Act 1980, whether or not they fall to be treated as capital receipts under section 58 below.

## **56 Use of credit approvals by local authorities**

- (1) Subject to Part I of Schedule 3 to this Act, where a local authority have received a basic credit approval or a supplementary credit approval, then, if they so determine, the approval may be treated wholly or partly—
  - (a) as authority not to charge to a revenue account an amount of expenditure which is defrayed during the period for which the approval has effect and which is for capital purposes to which the approval applies; or
  - (b) as authority, within the period for which the approval has effect, to enter into or agree to a variation of a credit arrangement for purposes to which the approval applies.
- (2) Where a local authority have received a basic credit approval or a supplementary credit approval and that approval is not extinguished under section 57 below or Part I of Schedule 3 to this Act, then, if or to the extent that they have not made a determination with respect to it under subsection (1) above, the authority may, if they so determine, transfer the approval, reduced where appropriate under that section or Part, to another local authority, either in whole or in part; and, where such a transfer is made,—
  - (a) the transfer of the approval (or part) shall not be regarded for the purposes of this Part as its use by the transferor authority; and
  - (b) this Part (including this section) shall have effect as if the approval (subject to any reduction as mentioned above) had been issued, in whole or as to the part transferred, directly to the transferee authority.
- (3) To the extent that and at the time when, in reliance on a credit approval,—
  - (a) an amount of expenditure which is not charged to a revenue account of the authority concerned is defrayed, or
  - (b) the authority concerned enter into or agree to a variation of a credit arrangement,
 the credit approval shall be regarded as used and, accordingly, shall not be available on any subsequent occasion or for any other purpose.
- (4) Subsection (3) above applies whether or not the determination under subsection (1) above precedes the date on which the expenditure is defrayed or, as the case may be, the credit arrangement is entered into or varied.
- (5) A determination by a local authority under subsection (1) above that a credit approval is to be treated as mentioned in paragraph (a) or paragraph (b) of that subsection may not be made later than 30th September in the financial year following that in which the authority defray the expenditure or, as the case may be, enter into or vary the credit arrangement in question.

## **57 Effect of certain capital grants on credit approvals**

- (1) In this section “specified capital grants” means grants, contributions and subsidies—
  - (a) which are paid to local authorities in aid of their expenditure for capital purposes;
  - (b) which are neither commuted payments falling within subsection (2) of section 63 below nor single or other payments falling within subsection (3) of that section; and
  - (c) which are, or to the extent that they are, specified for the purposes of this section by regulations made by the Secretary of State.

- (2) If at any time a local authority receive a specified capital grant, such, if any, of the authority's credit approvals as are relevant to that grant shall, in accordance with the following provisions of this section, be reduced or, as the case may be, extinguished by deducting therefrom an amount equal to the grant.
- (3) For the purposes of this section, a credit approval is relevant to a specified capital grant if—
  - (a) the approval has effect at the time the grant is received or at any time thereafter; and
  - (b) the purposes for which the approval may be used are or include the purposes towards expenditure on which the grant is made.
- (4) Subject to subsections (5) and (6) below, where, by virtue of subsection (2) above, a deduction is required in respect of a specified capital grant,—
  - (a) the deduction shall be applied to the credit approvals which are relevant to the grant in the order in which those approvals were received;
  - (b) subject to paragraph (d) below, the reduction or extinguishment of any such approval shall be regarded as taking place when the grant is received;
  - (c) if the amount of the deduction exceeds the total of the credit approvals which are relevant to the grant and were received before the grant, the excess shall be applied in reduction (or extinguishment) of credit approvals which are so relevant and are received later; and
  - (d) any such reduction or extinguishment of a later credit approval as is referred to in paragraph (c) above shall be regarded as taking place when the approval is received.
- (5) Notwithstanding anything in subsection (4) above, any reduction or extinguishment of a credit approval which is required to be made under Part I of Schedule 3 to this Act shall be applied before any reduction or extinguishment under this section.
- (6) In any case where—
  - (a) before the time when a specified capital grant is received by a local authority, the authority have made a determination under subsection (1) of section 56 above with respect to a credit approval which is relevant to that grant, and
  - (b) by virtue of subsection (3) of that section, that credit approval is to any extent to be regarded as having been used before that time,the credit approval shall not, to that extent, be taken into account under subsections (2) and (4) above; but, subject to that, the making of a determination under section 56(1) above with respect to a credit approval shall not affect the operation of those subsections in relation to it.

### *Capital receipts*

## **58 Capital receipts**

- (1) For the purposes of this Part, the capital receipts of a local authority are, subject to the following provisions of this section, those sums received by the authority in respect of—
  - (a) the disposal of any interest in an asset if, at the time of disposal, expenditure on the acquisition of the asset would be expenditure for capital purposes;

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- (b) the disposal of any investment other than an investment which, at the time of disposal, is an approved investment;
- (c) the repayment of, or a payment in respect of, any grants or other financial assistance of such a description that, if the expenditure on the grant or assistance had been incurred at the time of the repayment or payment, it would have constituted expenditure for capital purposes; or
- (d) the repayment of the principal of an advance (not being an approved investment) made by the authority for such a purpose that, if the advance had been made at the time of the repayment, expenditure incurred on it would have constituted expenditure for capital purposes;

and those sums become capital receipts at the time they are in fact received.

- (2) The following sums are not capital receipts for the purposes of this Part, namely, sums received by an authority in respect of—

- (a) the disposal of an interest in an asset which, at the time of the disposal, is an asset of a superannuation fund which the authority are required to keep by virtue of the Superannuation Act 1972; or
- (b) the disposal of an investment held for the purposes of such a superannuation fund; or
- (c) any repayment or payment such as is mentioned in paragraph (c) or paragraph (d) of subsection (1) above which is made to such a superannuation fund.

- (3) Subsection (1) above applies to sums received on or after 1st April 1990 but regardless of when the disposal or advance was made or the grant or other financial assistance was given and, in particular, whether or not it was made or given on or after that date but, in the case of a disposal made before that date, the reference in paragraph (a) or, as the case may be, paragraph (b) of subsection (1) above to the time of the disposal shall be construed as a reference to 1st April 1990.

- (4) Subject to subsection (6) below, to the extent that any sums which were received by a local authority before 1st April 1990 and either—

- (a) constituted capital receipts for the purposes of Part VIII of the Local Government, Planning and Land Act 1980, or
- (b) did not constitute such receipts by virtue of regulations under section 75(5) of that Act but are specified for the purposes of this subsection by regulations made by the Secretary of State,

are represented in the authority's accounts for the financial year ending immediately before that date either by amounts shown as capital receipts which are unapplied as at the end of that year or by amounts included in the balance as at the end of that year of any fund established by the authority under paragraph 16 of Schedule 13 to the Local Government Act 1972, those sums shall be treated for the purposes of this Part as capital receipts received by the authority on that date; and any reference in this Part to "1980 Act receipts" is a reference to sums which are capital receipts by virtue of this subsection.

- (5) So far as may be necessary for the purposes of this Part, a local authority shall identify which (if any) sums falling within paragraphs (a) and (b) of subsection (4) above are represented by amounts included as mentioned in that subsection in the balance of a fund established as so mentioned.

- (6) Subsection (4) above does not apply to a sum in respect of which an amount shown as an unapplied capital receipt or included in a balance as mentioned in that subsection

is, on 1st April 1990, held in an investment which is not on that date an approved investment; and, so far as may be necessary for the purposes of this Part, where on that date a local authority hold investments which are not then approved investments, the authority shall identify which (if any) of the amounts so shown or included are to be treated as held in such investments.

- (7) Where an asset or investment falling within paragraph (a) or paragraph (b) of subsection (1) above is disposed of and the whole or part of the purchase price is not received by the authority at the time of the disposal, then, subject to subsection (9) below, any interest payable to the authority in respect of the whole or any part of the price shall not be regarded as a capital receipt.
- (8) Subject to subsection (9) below, in the case of a disposal of an asset which consists of the grant, assignment or surrender of a leasehold interest in any land or the lease of any other asset, only the following are capital receipts, —
  - (a) any premium paid on the grant or assignment;
  - (b) any consideration received in respect of the surrender;
  - (c) any sum paid by way of rent more than three months before the beginning of the rental period to which it relates;
  - (d) any sum paid by way of rent in respect of a rental period which exceeds one year; and
  - (e) so much of any other sum paid by way of rent as, in accordance with directions given by the Secretary of State, falls to be treated as a capital receipt.
- (9) If the Secretary of State by regulations so provides,—
  - (a) the whole or such part as may be determined under the regulations of a sum received by a local authority and which, apart from this subsection, would not be a capital receipt shall be such a receipt; and
  - (b) the whole or such part as may be so determined of a sum which, apart from this subsection, would be a capital receipt shall not be such a receipt.
- (10) This section and sections 59 to 61 below have effect subject to Part II of Schedule 3 to this Act in relation to certain disposals, payments and repayments occurring before 1st April 1990.

## **59 The reserved part of capital receipts**

- (1) At the time when a local authority receive a capital receipt, a part of that receipt (in this Part referred to as “the reserved part”) shall be set aside by the authority as provision to meet credit liabilities.
- (2) Subject to the following provisions of this section, the reserved part of a capital receipt shall be—
  - (a) in the case of a receipt in respect of the disposal of dwelling-houses held for the purposes of Part II of the Housing Act 1985 (provision of housing), 75 per cent; and
  - (b) in the case of any other receipt, 50 per cent.
- (3) The Secretary of State may by regulations alter the percentage which (by virtue of subsection (2) above or the previous exercise of this power) is for the time being the reserved part of any capital receipt or provide that the amount which is the reserved part of any capital receipt shall be determined in accordance with the regulations; and any such regulations may make different provision in relation to—

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- (a) different descriptions of capital receipts; and
- (b) different descriptions of local authority;

and where the regulations specify a percentage, it may be any percentage from nil to 100.

- (4) If the Secretary of State by regulations so provides, capital receipts of a description specified in the regulations shall be treated for the purposes only of this section as reduced by an amount determined in accordance with the regulations.
- (5) In the exercise of the power conferred by subsection (3) or subsection (4) above, capital receipts and local authorities may be differentiated in any manner which appears to the Secretary of State to be appropriate and, in particular,—
  - (a) capital receipts may be differentiated by reference to the source from which they are derived including, in the case of receipts derived from disposals, different descriptions of disposals; and
  - (b) local authorities may be differentiated by reference to their type, their credit ceilings and the nature of their statutory powers and duties.
- (6) Without prejudice to subsection (3) above, in any case where—
  - (a) the consent of the Secretary of State is required for a disposal of a dwelling-house or any other property, and
  - (b) the Secretary of State gives a direction under this subsection with respect to a capital receipt in respect of that disposal,

subsection (2) above shall have effect in relation to that capital receipt as if it provided that the reserved part of the receipt were a percentage thereof specified in the direction or, according as the direction provides, an amount determined in accordance with the direction; but any direction under this subsection relating to a 1980 Act receipt shall be made before 1st April 1990.

- (7) Subsection (1) above does not apply to a capital receipt received by an authority as trustee of a trust fund which is held for charitable purposes.
- (8) Where a local authority receive a capital receipt in respect of an asset, investment, grant or other financial assistance which was originally acquired or made by the authority wholly or partly out of moneys provided by Parliament on terms which require, or enable a Minister of the Crown to require, the payment of any sum to such a Minister on or by reference to the disposal of the asset or investment or the repayment of the grant or assistance, the amount of the capital receipt shall be treated for the purposes of the preceding provisions of this section as reduced by the sum which appears to the authority to be so payable, including, in the case of a 1980 Act receipt, any sum which was payable, but was not in fact paid, before 1st April 1990.
- (9) Where a local authority receive a capital receipt, not being a 1980 Act receipt, in respect of—
  - (a) a disposal of land held for the purposes of Part II of the Housing Act 1985, or
  - (b) any other disposal of land made by virtue of Part V (the right to buy) of that Act,

the amount of the capital receipt shall be treated for the purposes of the preceding provisions of this section as reduced by so much of the receipt as is applied by the authority in defraying the administrative costs of and incidental to any such disposal.



## **60 The usable balance of capital receipts**

- (1) This section applies to the balance of any capital receipts received by a local authority after deducting—
- (a) the reserved part of each such receipt; and
  - (b) any sum which, by virtue of subsection (8) or subsection (9) of section 59 above, falls to be deducted in determining the amount of any receipt for the purposes of the preceding provisions of that section;
- but nothing in this section applies to a capital receipt which falls within section 59(7) above.
- (2) The balance referred to in subsection (1) above (in this Part referred to as “the usable part” of the authority’s capital receipts) shall be applied by the local authority, according as they determine, in one of the following ways, or partly in one way and partly in the other,—
- (a) to meet expenditure incurred for capital purposes; or
  - (b) as provision to meet credit liabilities;
- and, subject to subsection (3) below, may be so applied in the financial year in which the receipts are received or in any later financial year.
- (3) A determination by a local authority under subsection (2) above as to the manner in which the usable part of their capital receipts are to be applied may not be made later than 30th September in the financial year following that in which, in accordance with the determination, the receipts are to be applied.
- (4) For the purposes of this Part, to the extent that the usable part of an authority’s capital receipts are applied as mentioned in subsection (2)(a) above, it shall be taken to be so applied at the time when the expenditure in question is defrayed.
- (5) For the purposes of this Part, to the extent that the usable part of an authority’s capital receipts are applied as mentioned in subsection (2)(b) above, it shall be taken to be so applied—
- (a) if it is used as an amount of credit cover as mentioned in section 50(3)(b) above, when the credit arrangement in question is entered into or varied; and
  - (b) subject to subsection (6) below, in any other case, on the last day of the financial year in which (pursuant to the local authority’s determination) it is so applied.
- (6) In the case of a determination under subsection (2) above which—
- (a) relates to the application of the usable part of a 1980 Act receipt in the financial year beginning on 1st April 1990, and
  - (b) is made not later than 30th September 1990,
- subsection (5)(b) above shall have effect with the substitution of a reference to 1st April 1990 for the reference to the last day of the financial year in which the usable part is so applied.

## **61 Capital receipts not wholly in money paid to the authority**

- (1) This section applies where—
- (a) the whole or part of the consideration received by a local authority on or after 1st April 1990 for a disposal falling within section 58(1) above either is not

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- in money or consists of money which, at the request or with the agreement of the local authority concerned, is paid otherwise than to the authority; or
- (b) the right of a local authority to receive such a repayment or payment as is referred to in section 58(1) above is assigned or waived for a consideration which is received on or after 1st April 1990 and which, in whole or in part, is not in money or which, at the request or with the agreement of the local authority, is paid otherwise than to the authority; or
  - (c) on a disposal falling within section 58(8) above, any consideration is received on or after 1st April 1990 and, if it had been in money paid to the authority, it would have been a capital receipt.
- (2) Where this section applies in relation to any consideration, there shall be determined the amount which would have been the capital receipt if the consideration had been wholly in money paid to the local authority; and, subject to subsection (3) below, the amount so determined is in this section referred to as “the notional capital receipt”.
- (3) From the amount which, apart from this subsection, would be the notional capital receipt in relation to a disposal, repayment or payment there shall be deducted any amount of money that was paid or is payable to the local authority in respect of that disposal, repayment or payment and in respect of which section 59 above actually applies or will actually apply when the payment is received.
- (4) Where consideration to which this section applies is received in respect of a disposal, repayment or payment, the local authority shall set aside, at the time of the disposal or the assignment or waiver of the repayment or payment, and as provision to meet credit liabilities, an amount which, except in so far as regulations made or directions given by the Secretary of State otherwise provide, shall be equal to that which, under section 59 above, would be the reserved part of the notional capital receipt.
- (5) The amount falling to be set aside by a local authority under subsection (4) above shall be so set aside—
- (a) from the usable part of the authority’s capital receipts; or
  - (b) from a revenue account of the authority.
- (6) If the Secretary of State by regulations so provides,—
- (a) consideration which is not in money, which is received by a local authority and which is of a description specified in the regulations, or
  - (b) consideration which is in money, which is paid otherwise than to the authority and which is of a description specified in the regulations,
- shall be treated for the purposes of subsections (2), (4) and (5) above as consideration to which this section applies and, in relation to any such consideration, subsection (4) above shall apply with such modifications as are specified in the regulations.

### *Aggregate credit limit*

## **62 Aggregate credit limit**

- (1) For each local authority there shall be an aggregate credit limit which, subject to subsection (2) below, at any time shall be the total at that time of—
- (a) the authority’s temporary revenue borrowing limit;
  - (b) the authority’s temporary capital borrowing limit;

- (c) the authority's credit ceiling, as determined under Part III of Schedule 3 to this Act; and
- (d) the excess of the authority's approved investments and cash over their usable capital receipts;

but the reference in paragraph (d) above to approved investments and cash does not include investments or cash held for the purposes of such a superannuation fund or trust fund as is referred to in paragraph (h) or paragraph (i) of subsection (2) of section 42 above.

- (2) On an application made by a local authority, the Secretary of State may direct that, for any period specified in the direction, the amount which, apart from the direction, would be the authority's aggregate credit limit at any time during that period shall be increased by an amount specified in the direction with respect to that period; and any increase specified in a direction under this subsection may be expressed to have effect subject to compliance with such terms and conditions as may be so specified.
- (3) Subject to subsection (4) below, an authority's temporary revenue borrowing limit at any time is whichever is the less of—
  - (a) the total sums which at that time remain to be received by the authority and which, as income, fall or will fall to be credited to a revenue account of the authority for the current financial year; and
  - (b) the aggregate of—
    - (i) the total sums which, up to and including that time (whether in the current or a previous financial year), the authority have disbursed in respect of expenditure which falls to be charged to a revenue account of the authority for the current financial year; and
    - (ii) any relevant arrears in respect of which provision has been or is to be charged to such a revenue account or which have been or are to be written off and charged to such a revenue account;and for the purposes of paragraph (b)(ii) above "relevant arrears" are amounts in respect of income which remain to be received by the authority and which, as income, fall to be credited to a revenue account of the authority for the financial year beginning two years before the beginning of the current financial year.
- (4) At any time in a financial year the amount which, apart from this subsection, would be an authority's temporary revenue borrowing limit shall be increased by the addition of an amount in respect of the immediately preceding financial year, being whichever is the less of—
  - (a) the excess (if any) of the total sums which, up to and including that time, the authority have disbursed in respect of expenditure falling to be charged to a revenue account of the authority for that preceding year over the total sums which, up to and including that time, the authority have received in respect of income falling to be credited to such a revenue account; and
  - (b) the total sums which at that time remain to be received by the authority and which, as income, fall or will fall to be credited to a revenue account of the authority for that preceding year.
- (5) An authority's temporary capital borrowing limit at any time is so much of the expenditure defrayed by the authority for capital purposes in the eighteen months ending at that time as is due to be, but at that time has not yet been, re-imbursed by any other person, excluding expenditure which is to be re-imbursed or met out of grants from a Community institution; and for this purpose it is immaterial whether the re-

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imbursement is due as a result of an obligation arising by statute, contract or otherwise or is to take the form of a grant or other obligation voluntarily undertaken.

- (6) If at any time an authority's usable capital receipts exceed their approved investments and cash referred to in paragraph (d) of subsection (1) above, the amount taken into account under that paragraph shall be a negative amount.
- (7) Where an amount taken into account under paragraph (c) or paragraph (d) of subsection (1) above is a negative amount, it shall be a deduction in determining the total referred to in that subsection.
- (8) Any reference in this section to an authority's usable capital receipts at any time is a reference to the usable part of the authority's capital receipts so far as they have not been applied before that time.

*Amounts set aside to meet credit liabilities*

**63      Duty to set certain amounts aside as provision to meet credit liabilities**

- (1) Without prejudice to any other provision of this Part under which a local authority are required or authorised to set aside any amount as provision to meet credit liabilities, in each financial year a local authority shall, by virtue of this section, set aside, from such revenue account or accounts as the authority think fit, as provision to meet credit liabilities, an amount determined by the authority, being not less than the minimum revenue provision for that year referred to in Part IV of Schedule 3 to this Act.
- (2) Where, by virtue of section 157 below, the Secretary of State makes to a local authority a commuted payment, within the meaning of that section, the authority shall, at the time the payment is received, set aside an amount equal to that payment as provision to meet credit liabilities.
- (3) If, otherwise than by virtue of section 157 below, the Secretary of State or any other Minister of the Crown commutes into a single payment (or into a smaller number of payments than would otherwise be payable) sums which would otherwise have been paid to a local authority annually or by reference to any other period of time, the authority shall, at the time that single payment or, as the case may be, each of that smaller number of payments is received, set aside an amount equal to the payment as provision to meet credit liabilities.
- (4) Where a local authority receive any sum by way of grant from a Community institution towards the authority's expenditure on capital purposes, they shall at the time the sum is received, set aside an amount equal to that sum as provision to meet credit liabilities.
- (5) A determination under subsection (1) above shall be made not later than 30th September in the financial year following that to which the determination relates.

**64      Use of amounts set aside to meet credit liabilities**

- (1) Amounts for the time being set aside by a local authority (whether voluntarily or pursuant to a requirement under this Part) as provision to meet credit liabilities may, subject to subsection (2) below, be applied only for one or more of the following purposes—
  - (a) to meet any liability of the authority in respect of money borrowed by the authority, other than a liability in respect of interest;

- (b) to meet any liability of the authority in respect of credit arrangements, other than those excluded by regulations under paragraph 11 of Schedule 3 to this Act; and
  - (c) where a credit approval has been used as authority not to charge particular expenditure to a revenue account, to meet that expenditure.
- (2) Subject to the following provisions of this section if, on the date which is the relevant date for any financial year, a local authority's credit ceiling, as determined under Part III of Schedule 3 to this Act, is a negative amount, any such amount as is referred to in subsection (1) above may in that financial year—
  - (a) be applied for purposes specified by regulations made by the Secretary of State; or
  - (b) be transferred to a body so specified.
- (3) The aggregate of the amounts which may be applied by a local authority in accordance with subsection (2) above in any financial year shall not exceed the amount by which the authority's credit ceiling on the relevant date is less than nil.
- (4) References in subsections (2) and (3) above to the relevant date shall be construed as follows—
  - (a) for the financial year beginning on 1st April 1990, the relevant date is that date; and
  - (b) for any subsequent financial year, the relevant date is the last day of the preceding financial year.
- (5) Regulations under subsection (2) above may specify conditions with which a local authority must comply in applying or transferring any amount as mentioned in that subsection and with respect to any amount so applied or transferred; and an amount shall not be taken to be applied or transferred under that subsection unless any such conditions are complied with.

### *Supplementary*

## **65 Information**

- (1) The Secretary of State may serve on a local authority a notice requiring the authority to supply to him such information as is specified in the notice and is required by him—
  - (a) for the purpose of deciding whether to exercise his powers, and how to perform his functions, under this Part; or
  - (b) for the purpose of ascertaining whether an authority have acted, or are likely to act, in accordance with this Part; or
  - (c) for the purpose of assisting the formulation of government economic policies; but no information shall be required for the purpose specified in paragraph (c) above unless it relates to, or to plans or proposals about, the finances and expenditure of the authority or of any company in which the authority have an interest.
- (2) If the information specified in a notice under this section is in the possession or under the control of the authority on whom the notice is served, the authority shall supply the information required in such form and manner, and at such time, as is specified in the notice and, if the notice so requires, the information shall be certified (according as is specified in the notice) in one or both of the following ways,—

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- (a) by the chief finance officer of the authority, within the meaning of section 5 above, or by such other person as may be specified in the notice; and
  - (b) under arrangements made by the Audit Commission for Local Authorities in England and Wales.
- (3) If a local authority fail to comply with subsection (2) above, the Secretary of State may decide—
  - (a) whether to exercise his powers, and how to perform his functions, under this Part, or
  - (b) whether the authority have acted, or are likely to act, in accordance with this Part,
 on the basis of such assumptions and estimates as he thinks fit.
- (4) In deciding—
  - (a) whether to exercise his powers, and how to perform his functions, under this Part, or
  - (b) whether an authority have acted, or are likely to act, in accordance with this Part,
 the Secretary of State may also take into account any other information available to him, whatever its source and whether or not obtained under a provision contained in or made under this or any other enactment.

## **66 Interpretation of Part IV**

- (1) In this Part—
  - (a) “approved investments” means investments approved for the purposes of this Part by regulations made by the Secretary of State;
  - (b) “financial year” means the period of twelve months beginning on 1st April;
  - (c) “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975; and
  - (d) “1980 Act receipt” has the meaning given by section 58(4) above.
- (2) For the purposes of this Part, a local authority—
  - (a) incur a liability in respect of a payment at the time when they become unconditionally liable to make the payment; and
  - (b) discharge a liability in respect of a payment at the time when they make the actual payment, whether or not they have at that time become unconditionally liable to do so.
- (3) In relation to a credit arrangement,—
  - (a) any reference in this Part to consideration given or to be given by the local authority under the arrangement does not include a reference to any consideration which is given before the time the arrangement comes into being (as defined in section 48(3) above); and
  - (b) any reference in this Part to a liability of the local authority under the arrangement does not include a reference to a liability which is met by the making of a payment before that time.
- (4) In relation to a local authority, references in this Part to proper practices are references to those accounting practices—
  - (a) which the authority are required to follow by virtue of any enactment; or

- (b) which, whether by reference to any generally recognised published code or otherwise, are regarded as proper accounting practices to be followed in the keeping of the accounts of local authorities, either generally or of the description concerned;
- but, in the event of any conflict in any respect between the practices falling within paragraph (a) above and those falling within paragraph (b) above, only those falling within paragraph (a) above are to be regarded as proper practices.
- (5) Subsection (4) above has effect not only for the purposes of this Act but also for the purposes of—
  - (a) any enactment passed after or in the same Session as this Act; and
  - (b) Part III of the Local Government Finance Act 1982 and the Local Government Finance Act 1988.
- (6) If, under or by virtue of any enactment, all or any of the liabilities of an authority (in this subsection referred to as “the original authority”) in respect of a loan to or borrowing (or money borrowed) by the authority have become liabilities of another local authority (in this subsection referred to as “the current authority”) then, in so far as regulations made by the Secretary of State so provide,—
  - (a) in relation to the current authority, any reference in this Part to a loan to or borrowing (or money borrowed) by that authority includes a reference to the loan to or borrowing (or money borrowed) by the original authority; and
  - (b) if the original authority is a local authority for the purposes of this Part, any reference to a loan to or borrowing (or money borrowed) by that authority excludes a reference to the loan, borrowing (or money borrowed) in respect of which the liabilities have become those of the current authority.
- (7) For the avoidance of doubt, except as provided by section 44(5) above, any reference in this Part to borrowing by a local authority does not include a reference to the temporary use by an authority of money forming part of a particular fund of the authority for a purpose other than that of the fund.

## PART V

### COMPANIES IN WHICH LOCAL AUTHORITIES HAVE INTERESTS

#### **67 Application of, and orders under, Part V**

- (1) Any reference in this Part to a company is a reference to a body corporate of one of the following descriptions—
  - (a) a company limited by shares;
  - (b) a company limited by guarantee and not having a share capital;
  - (c) a company limited by guarantee and having a share capital;
  - (d) an unlimited company; and
  - (e) a society registered or deemed to be registered under the Industrial and Provident Societies Act 1965 or under the Industrial and Provident Societies Act (Northern Ireland) 1969.
- (2) Expressions used in paragraphs (a) to (d) of subsection (1) above have the same meaning as in Chapter I of Part I of the Companies Act 1985 or the corresponding enactment for the time being in force in Northern Ireland.

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- (3) Any reference in this Part to a local authority is a reference to a body of one of the following descriptions—
- (a) a county council;
  - (b) a district council;
  - (c) a London borough council;
  - (d) the Common Council of the City of London in its capacity as a local authority, police authority or port health authority;
  - (e) the Council of the Isles of Scilly;
  - (f) a parish council;
  - (g) a community council;
  - (h) a fire authority constituted by a combination scheme under the Fire Services Act 1947;
  - (i) a police authority constituted under section 2 of the Police Act 1964 or a combined police authority established by an amalgamation scheme under that Act;
  - (j) an authority established under section 10 of the Local Government Act 1985 (waste disposal authorities);
  - (k) a joint authority established by Part IV of that Act (police, fire services, civil defence and transport);
  - (l) any body established pursuant to an order under section 67 of that Act (successors to residuary bodies);
  - (m) the Broads Authority;
  - (n) any joint board the constituent members of which consist of any of the bodies specified above;
  - (o) a joint or special planning board constituted for a National Park by an order under paragraph 1 or paragraph 3 of Schedule 17 to the Local Government Act 1972; and
  - (p) a Passenger Transport Executive.
- (4) Any power to make an order under this Part shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament; and under any such power different provision may be made for different cases and different descriptions of cases (including different provision for different areas).

## **68 Companies controlled by local authorities and arm's length companies**

- (1) For the purposes of this Part, unless the Secretary of State otherwise directs, a company is for the time being under the control of a local authority if—
- (a) by virtue of section 736 of the Companies Act 1985 the company is at that time a subsidiary of the local authority for the purposes of that Act; or
  - (b) paragraph (a) above does not apply but the local authority have at that time power to control a majority of the votes at a general meeting of the company as mentioned in subsection (3) below; or
  - (c) paragraph (a) above does not apply but the local authority have at that time power to appoint or remove a majority of the board of directors of the company; or
  - (d) the company is under the control of another company which, by virtue of this subsection, is itself under the control of the local authority;



and, for the purposes of paragraph (d) above, any question whether one company is under the control of another shall be determined by applying the preceding provisions of this subsection, substituting a reference to the other company for any reference to the local authority.

- (2) A direction under subsection (1) above—
  - (a) may be limited in time and may be made conditional upon such matters as appear to the Secretary of State to be appropriate; and
  - (b) may be made with respect to a particular company or a description of companies specified in the direction.
- (3) The reference in subsection (1)(b) above to a power to control a majority of votes at a general meeting of the company is a reference to a power which is exercisable—
  - (a) in the case of a company limited by shares, through the holding of equity share capital in any one or more of the following ways, namely, by the local authority, by nominees of the local authority and by persons whose shareholding is under the control of the local authority; or
  - (b) in the case of any company, through the holding of votes at a general meeting of the company in any one or more of the following ways, namely, by the local authority, by a group of members of the company the composition of which is controlled by the local authority and by persons who have contractually bound themselves to vote in accordance with the instructions of the local authority; or
  - (c) partly in one of those ways and partly in the other.
- (4) Subsection (3) of section 736A of the Companies Act 1985 (right to appoint or remove a majority of a company's board of directors) and the following provisions of that section as they have effect in relation to subsection (3) apply for the purposes of subsection (1)(c) above with the substitution for the word "right", wherever it occurs, of the word "power".
- (5) For the purposes of subsection (3)(a) above, a person's shareholding is under the control of a local authority if—
  - (a) his right to hold the shares arose because of some action which the authority took, or refrained from taking, in order to enable him to have the right; and
  - (b) the local authority, alone or jointly with one or more other persons can require him to transfer his shareholding (or any part of it) to another person.
- (6) Notwithstanding that, by virtue of the preceding provisions of this section, a company is for the time being under the control of a local authority, the company is for the purposes of this Part an "arm's length company", in relation to any financial year if, at a time before the beginning of that year, the authority resolved that the company should be an arm's length company and, at all times from the passing of that resolution up to the end of the financial year in question, the following conditions have applied while the company has been under the control of the local authority,—
  - (a) that each of the directors of the company was appointed for a fixed term of at least two years;
  - (b) that, subject to subsection (7) below, no director of the company has been removed by resolution under section 303 of the Companies Act 1985;
  - (c) that not more than one-fifth of the directors of the company have been members or officers of the authority;

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- (d) that the company has not occupied (as tenant or otherwise) any land in which the authority have an interest otherwise than for the best consideration reasonably obtainable;
  - (e) that the company has entered into an agreement with the authority that the company will use its best endeavours to produce a specified positive return on its assets;
  - (f) that, except for the purpose of enabling the company to acquire fixed assets or to provide it with working capital, the authority have not lent money to the company or guaranteed any sum borrowed by it or subscribed for any securities in the company;
  - (g) that the authority have not made any grant to the company except in pursuance of an agreement or undertaking entered into before the financial year (within the meaning of the Companies Act 1985) of the company in which the grant was made; and
  - (h) that the authority have not made any grant to the company the amount of which is in any way related to the financial results of the company in any period.
- (7) If the Secretary of State so directs, the removal of a director shall be disregarded for the purposes of subsection (6)(b) above; but the Secretary of State shall not give such a direction if it appears to him that the director was removed with a view to influencing the management of the company for other than commercial reasons.

## **69 Companies subject to local authority influence**

- (1) For the purposes of this Part, unless the Secretary of State otherwise directs, a company which is not at the time under the control of a local authority is for the time being subject to the influence of a local authority if it is not a banking or insurance company or a member of a banking or insurance group and at that time there is such a business relationship between the company and the authority as is referred to in subsection (3) below and either—
- (a) at least 20 per cent. of the total voting rights of all the members having the right to vote at a general meeting of the company are held by persons who are associated with the authority as mentioned in subsection (5) below; or
  - (b) at least 20 per cent. of the directors of the company are persons who are so associated; or
  - (c) at least 20 per cent. of the total voting rights at a meeting of the directors of the company are held by persons who are so associated.
- (2) A direction under subsection (1) above—
- (a) may be limited in time and may be made conditional upon such matters as appear to the Secretary of State to be appropriate; and
  - (b) may be made with respect to a particular company or a description of companies specified in the direction.
- (3) For the purposes of this section there is a business relationship between a company and a local authority at any time if the condition in any one or more of the following paragraphs is fulfilled—
- (a) within a period of twelve months which includes that time the aggregate of the payments to the company by the authority or by another company which is under the control of the authority represents more than one-half of the company's turnover, as shown in its profit and loss account for the most recent financial year for which the company's auditors have made a report on the

- accounts or, if there is no such account, as estimated by the authority for the period of twelve months preceding the date of the estimate or for such part of that period as follows the formation of the company;
- (b) more than one-half of the company's turnover referred to in paragraph (a) above is derived from the exploitation of assets of any description in which the local authority or a company under the control of the authority has an interest (disregarding an interest in land which is in reversion on a lease granted for more than 7 years);
  - (c) the aggregate of—
    - (i) grants made either by the authority and being expenditure for capital purposes or by a company under the control of the authority, and
    - (ii) the nominal value of shares or stock in the company which is owned by the authority or by a company under the control of the authority, exceeds one-half of the net assets of the company;
  - (d) the aggregate of—
    - (i) grants falling within paragraph (c)(i) above,
    - (ii) loans or other advances made or guaranteed by the authority or by a company under the control of the authority, and
    - (iii) the nominal value referred to in paragraph (c)(ii) above, exceeds one-half of the fixed and current assets of the company;
  - (e) the company at that time occupies land by virtue of an interest which it obtained from the local authority or a company under the control of the authority and which it so obtained at less than the best consideration reasonably obtainable; and
  - (f) the company intends at that time to enter into (or complete) a transaction and, when that is done, there will then be a business relationship between the company and the authority by virtue of any of paragraphs (a) to (e) above.
- (4) In subsection (3) above—
- (a) the reference in paragraph (c) to the net assets of the company shall be construed in accordance with section 152(2) of the Companies Act 1985; and
  - (b) the reference in paragraph (d) to the fixed and current assets of the company shall be construed in accordance with paragraph 77 of Schedule 4 to that Act;
- and in either case, the reference is a reference to those assets as shown in the most recent balance sheet of the company on which, at the time in question, the auditors have made a report or, if there is no such balance sheet, as estimated by the local authority for the time in question.
- (5) For the purposes of this section, a person is at any time associated with a local authority if—
- (a) he is at that time a member of the authority;
  - (b) he is at that time an officer of the authority;
  - (c) he is at that time both an employee and either a director, manager, secretary or other similar officer of a company which is under the control of the authority; or
  - (d) at any time within the preceding four years he has been associated with the authority by virtue of paragraph (a) above.
- (6) If and to the extent that the Secretary of State by order so provides, a person is at any time associated with a local authority if—

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- (a) at that time he is, or is employed by or by a subsidiary of, a person who for the time being has a contractual relationship with the authority to provide—
    - (i) advice with regard to the authority's interest in any company (whether existing or proposed to be formed), or
    - (ii) advice with regard to the management of an undertaking or the development of land by a company (whether existing or proposed to be formed) with which it is proposed that the authority should enter into any lease, licence or other contract or to which it is proposed that the authority should make any grant or loan, or
    - (iii) services which facilitate the exercise of the authority's rights in any company (whether by acting as the authority's representative at a meeting of the company or as a director appointed by the authority or otherwise);
  - (b) at any time within the preceding four years, he has been associated with the authority by virtue of paragraph (b) or paragraph (c) of subsection (5) above;
  - (c) he is at that time the spouse of, or carries on business in partnership with, a person who is associated with the authority by virtue of subsection (5)(a) above; or
  - (d) he holds a relevant office in a political association or other body which, in the nomination paper of a person who is an elected member of the authority, formed part of that person's description.
- (7) For the purposes of subsection (6)(d) above, an office in a political association or body is relevant to a local authority in the following circumstances—
- (a) if the association or body is active only in the area of the local authority, any office in it is relevant; and
  - (b) in any other case, an office is relevant only if it is in a branch or other part of the association or body which is active in the area of the local authority.
- (8) In relation to a company which is an industrial and provident society, any reference in this section to the directors of the company is a reference to the members of the committee of management.
- (9) Subject to subsections (4) and (8) and section 67 above, expressions used in this section have the same meaning as in the Companies Act 1985.

## **70 Requirements for companies under control or subject to influence of local authorities**

- (1) In relation to companies under the control of local authorities and companies subject to the influence of local authorities, the Secretary of State may by order make provision regulating, forbidding or requiring the taking of certain actions or courses of action; and an order under this subsection may—
- (a) make provision in relation to those companies which are arm's length companies different from that applicable to companies which are not; and
  - (b) make provision in relation to companies under the control of local authorities different from that applicable in relation to companies under the influence of local authorities.
- (2) It shall be the duty of every local authority to ensure, so far as practicable, that any company under its control complies with the provisions for the time being made by order under subsection (1) above; and if a local authority fails to perform that duty in

relation to any company, any payment made by the authority to that company and any other expenditure incurred by the authority in contravention of any such provisions shall be deemed for the purposes of Part III of the Local Government Finance Act 1982 (accounts and audits) to be expenditure which is unlawful.

- (3) In order to secure compliance, in relation to companies subject to the influence of local authorities, with provisions made by virtue of subsection (1) above, an order under that subsection may prescribe requirements to be complied with by any local authority in relation to conditions to be included in such leases, licences, contracts, gifts, grants or loans as may be so prescribed which are made with or to a company subject to the influence of the local authority.
- (4) It shall be the duty of every local authority to comply with any requirements for the time being prescribed under subsection (3) above; and if a local authority fails to perform that duty, any expenditure which is incurred by the local authority under the lease, licence, contract, gift, grant or loan in question shall be deemed for the purposes of Part III of the Local Government Finance Act 1982 to be expenditure which is unlawful.
- (5) Without prejudice to the generality of the power conferred by subsection (1) above, an order under that subsection may make provision requiring a company or local authority to obtain the consent of the Secretary of State, or of the Audit Commission for Local Authorities in England and Wales, before taking any particular action or course of action.

## **71 Control of minority interests etc. in certain companies**

- (1) In relation to a local authority, subsection (2) below applies to any company other than—
  - (a) a company which is or, if the action referred to in that subsection is taken, will be under the control of the local authority; and
  - (b) a company of a description specified for the purposes of this section by an order made by the Secretary of State;and in this section an “authorised company” means a company falling within paragraph (b) above.
- (2) Except with the approval of the Secretary of State, in relation to a company to which this subsection applies, a local authority may not—
  - (a) subscribe for, or acquire, whether in their own name or in the name of a nominee, any shares or share warrants in the company;
  - (b) become or remain a member of the company if it is limited by guarantee;
  - (c) exercise any power, however arising, to nominate any person to become a member of the company;
  - (d) exercise any power to appoint directors of the company;
  - (e) permit any officer of the authority, in the course of his employment, to make any such nomination or appointment as is referred to in paragraph (c) or paragraph (d) above; or
  - (f) permit an officer of the authority, in the course of his employment, to become or remain a member or director of the company.
- (3) Any approval of the Secretary of State under subsection (2) above may be general or relate to any specific matter or company.

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- (4) A local authority may not take any action, or refrain from exercising any right, which would have the result that a person who is disqualified from membership of the authority (otherwise than by being employed by that or any other local authority or by a company which is under the control of a local authority) becomes a member or director of an authorised company or is authorised, in accordance with section 375 of the Companies Act 1985, to act as the authority's representative at a general meeting of an authorised company (or at meetings of an authorised company which include a general meeting).
- (5) In any case where,—
- (a) in accordance with section 375 of the Companies Act 1985, a local authority have authorised a member or officer of the authority to act as mentioned in subsection (4) above, or
  - (b) a member or officer of a local authority has become a member or director of an authorised company as mentioned in subsection (7) below,
- the authority shall make arrangements (whether by standing orders or otherwise) for enabling members of the authority, in the course of proceedings of the authority (or of any committee or sub-committee thereof), to put to the member or officer concerned questions about the activities of the company.
- (6) Nothing in subsection (5) above shall require the member or officer referred to in that subsection to disclose any information about the company which has been communicated to him in confidence.
- (7) Any member or officer of a local authority who has become a member or director of an authorised company by virtue of—
- (a) a nomination made by the authority, or
  - (b) election at a meeting of the company at which voting rights were exercisable (whether or not exercised) by the authority or by a person bound to vote in accordance with the instructions of the authority, or
  - (c) an appointment made by the directors of another company, the majority of whom became directors of that company by virtue of a nomination made by the authority or election at a meeting of the company at which voting rights were exercisable as mentioned in paragraph (b) above,
- shall make a declaration to the authority, in such form as they may require, of any remuneration or re-imbursement of expenses which he receives from the company as a member or director or in respect of anything done on behalf of the company.
- (8) Subject to section 67 above, expressions used in this section have the same meaning as in the Companies Act 1985.

## **72      Trusts influenced by local authorities**

- (1) The Secretary of State may by order made by statutory instrument adapt the provisions of section 69 above so as to make them applicable to trusts which are not charitable; and, subject to subsection (2) below, this Part shall apply in relation to trusts which are subject to local authority influence by virtue of that section as so adapted as it applies in relation to companies which are subject to local authority influence.
- (2) In the exercise of the power conferred by section 70 above, as applied in relation to trusts by subsection (1) above, the Secretary of State may make different provision for trusts as compared with companies.

### **73 Authorities acting jointly and by committees**

(1) In any case where—

- (a) apart from this section a company would not be under the control of any one local authority, but
- (b) if the actions, powers and interests of two or more local authorities were treated as those of one authority alone, the company would be under the control of that one authority,

the company shall be treated for the purposes of this Part as under the control of each of the two or more local authorities mentioned in paragraph (b) above.

(2) In any case where, apart from this section, a company would not be treated as being subject to the influence of any one local authority, it shall be treated as being subject to the influence of each of a number of local authorities (in this section referred to as a “group”) if the conditions in subsection (3) below are fulfilled with respect to the company and the group of authorities.

(3) The conditions referred to in subsection (2) above are—

- (a) that at least one of the conditions in paragraphs (a) to (e) of subsection (3) of section 69 above would be fulfilled—
  - (i) if any reference therein to the company being under the control of a local authority were a reference to its being under the control of any one of the authorities in the group or of any two or more of them taken together; and
  - (ii) if any other reference therein to the local authority were a reference to any two or more of the authorities in the group taken together; and
- (b) that at least one of the conditions in paragraphs (a) to (c) of subsection (1) of section 69 above would be fulfilled if any reference therein to the local authority were a reference to those local authorities who are taken into account under sub-paragraph (i) or sub-paragraph (ii) of paragraph (a) above taken together; and
- (c) that if the condition (or one of the conditions) which would be fulfilled as mentioned in paragraph (b) above is that in subsection (1)(a) of section 69 above, then, so far as concerns each local authority in the group, at least one person who, in terms of subsection (5) of that section, is associated with that authority has the right to vote at a general meeting of the company; and
- (d) that, if paragraph (c) above does not apply, then, so far as concerns each local authority in the group, a person who, in terms of section 69(5) above, is associated with the authority is a director of the company.

(4) For the purposes of this Part, anything done, and any power exercisable, by a committee or sub-committee of a local authority, or by any of the authority’s officers, shall be treated as done or, as the case may be, exercisable by the authority.

(5) For the purposes of this Part, anything done, and any power exercisable, by a joint committee of two or more local authorities or by a sub-committee of such a joint committee shall be treated as done or, as the case may be, exercisable by each of the local authorities concerned.

## PART VI

### HOUSING FINANCE

#### *Housing accounts*

#### **74 Duty to keep Housing Revenue Account**

- (1) A local housing authority shall keep, in accordance with proper practices, an account, called the “Housing Revenue Account”, of sums falling to be credited or debited in respect of—
  - (a) houses and other buildings which have been provided under Part II of the Housing Act 1985 (provision of housing);
  - (b) land which has been acquired or appropriated for the purposes of that Part;
  - (c) houses purchased under section 192 of that Act (purchase of house found on appeal against repair notice to be unfit and beyond repair at reasonable cost);
  - (d) dwellings in respect of which a local authority have received assistance under section 1 or section 4(2A) of the Housing (Rural Workers) Act 1926;
  - (e) any property which—
    - (i) with the consent of the Secretary of State given under section 417(1) of the Housing Act 1985,
    - (ii) with the consent of a Minister given under section 50(1)(e) of the Housing (Financial Provisions) Act 1958, or
    - (iii) by virtue of section 50(2) of that Act (houses vesting in local authority on default of another person),
 was brought within the corresponding account kept under Part XIII of the Housing Act 1985 for years beginning before 1st April 1990; and
  - (f) such land, houses or other buildings not within the preceding paragraphs as the Secretary of State may direct.
- (2) References in subsection (1) above and the other provisions of this Part to provisions of the Housing Act 1985 include, where the context so admits, references to the corresponding provisions of earlier enactments; and the reference in paragraph (b) of that subsection to land acquired for the purposes of Part II of that Act includes—
  - (a) land which a local authority were deemed to have acquired under Part V of the Housing Act 1957 by virtue of section 57(6) of that Act (land acquired for re-development in pursuance of re-development plan) before the repeal of that section on 25th August 1969; and
  - (b) any structures on such land which were made available to a local authority under section 1 of the Housing (Temporary Accommodation) Act 1944 (prefabs).
- (3) Paragraphs (a) to (e) of subsection (1) above shall not apply to—
  - (a) land, houses or other buildings disposed of by the authority;
  - (b) land acquired by the authority for the purpose of disposing of houses provided, or to be provided, on the land, or of disposing of the land to a person who intends to provide housing accommodation on it;
  - (c) houses provided by the authority on land so acquired; or
  - (d) such land, houses or other buildings as the Secretary of State may direct;



and paragraph (a) of that subsection shall not apply to houses and other buildings provided on or before 6th February 1919.

- (4) A local housing authority not possessing property to which subsection (1) above applies shall nevertheless keep a Housing Revenue Account unless the Secretary of State consents to their not doing so and they comply with such conditions (if any) as may be specified in the consent.
- (5) In this Part—
- (a) references to the houses or other property of an authority within the authority's Housing Revenue Account are references to the houses, dwellings or other property to which subsection (1) above for the time being applies; and
  - (b) references (however expressed) to a disposal are references to a conveyance of the freehold, or a grant or assignment of a lease (other than a shared ownership lease) which is a long tenancy within the meaning given by section 115 of the Housing Act 1985.
- (6) Sections 417 to 420 of, and Schedule 14 to, the Housing Act 1985 (which are superseded by this section, sections 75 to 78 below and Schedule 4 to this Act) shall cease to have effect.

## **75 The keeping of the Housing Revenue Account**

Schedule 4 to this Act shall have effect with respect to the keeping of a local housing authority's Housing Revenue Account, as follows—

- Part I - Credits to the account.
- Part II - Debits to the account.
- Part III - Special cases.
- Part IV - Supplementary provisions.

## **76 Duty to prevent debit balance on Housing Revenue Account**

- (1) This section applies where for any year ("the relevant year") a local housing authority who are required to keep a Housing Revenue Account possess any houses or other property within the account.
- (2) The authority shall, during the months of January and February immediately preceding the relevant year, formulate proposals which satisfy the requirements of subsection (3) below and relate to—
- (a) the income of the authority for the year from rents and other charges in respect of houses and other property within their Housing Revenue Account;
  - (b) the expenditure of the authority for the year in respect of the repair, maintenance, supervision and management of such property; and
  - (c) such other matters connected with the exercise of the authority's functions in relation to such property as the Secretary of State may direct.
- (3) Proposals formulated by the authority under subsection (2) above satisfy the requirements of this subsection at any time if, on the assumption that the following will prove correct, namely—
- (a) the best assumptions that they are able to make at that time as to all matters which may affect the amounts falling to be credited or debited to their Housing Revenue Account for the relevant year; and

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- (b) the best estimates that they are able to make at that time of the amounts which, on those assumptions, will fall to be so credited or debited, implementation of the proposals will secure that the account for that year does not show a debit balance.
- (4) No assumptions shall be made under subsection (3) above as to the exercise by the Secretary of State of any power except on the basis of information published by him or on his behalf or supplied by him to the authority.
- (5) Subject to subsections (6) and (7) below, the authority shall implement the proposals formulated by them under subsection (2) above.
- (6) The authority shall from time to time determine whether the proposals formulated under subsection (2) above satisfy the requirements of subsection (3) above; and—
  - (a) termine that question in the affirmative, they may make such revisions of the proposals as they think fit, so long as the proposals (as so revised) continue to satisfy those requirements;
  - (b) if they determine that question in the negative, they shall make such revisions of the proposals as are reasonably practicable towards securing that the proposals (as so revised) satisfy those requirements.
- (7) Where the proposals formulated under subsection (2) above are revised under subsection (6) above, subsections (3) to (6) above shall apply in relation to the proposals as so revised as they applied in relation to the proposals as originally formulated.
- (8) The authority shall, within one month of formulating their proposals under subsection (2) above, or of revising those proposals under subsection (6) above, prepare a statement setting out—
  - (a) those proposals as so formulated or so revised;
  - (b) the estimates made by them under subsection (3)(b) above on the basis of which those proposals were so formulated or so revised; and
  - (c) such other particulars relating to those proposals and estimates as the Secretary of State may direct;
 and a direction under paragraph (c) above may specify the manner in which the particulars are to be set out in the statement.
- (9) The authority shall, until the end of the year next following the relevant year, keep copies of the statement which is for the time being the latest statement prepared by them under subsection (8) above available for inspection by the public without charge at all reasonable hours at one or more of their offices; and any person shall be entitled to take copies of, or extracts from, that statement when so made available.

## **77 Power to keep Housing Repairs Account**

- (1) A local housing authority who are required to keep a Housing Revenue Account may also keep, in accordance with proper practices, an account called the “Housing Repairs Account”.
- (2) An authority who keep a Housing Repairs Account shall carry to the credit of the account for any year—
  - (a) sums transferred for the year from their Housing Revenue Account; and

- (b) sums receivable by the authority for the year in connection with the repair or maintenance of houses or other property within their Housing Revenue Account (either from their tenants or from the sale of scrapped or salvaged materials).
- (3) The authority shall carry to the debit of the account for any year—
  - (a) all expenditure incurred by them for the year in connection with the repair or maintenance of houses or other property within their Housing Revenue Account;
  - (b) such expenditure incurred by them for the year in connection with the improvement or replacement of houses or other property within their Housing Revenue Account as may from time to time be determined by the Secretary of State; and
  - (c) sums transferred for the year to the Housing Revenue Account in accordance with subsection (5) below.
- (4) The authority shall secure that sufficient credits are carried to the account to secure that no debit balance is shown in the account for any year.
- (5) The authority may carry some or all of any credit balance in the account for any year to the credit of their Housing Revenue Account.
- (6) So much of any credit balance shown in an authority's Housing Repairs Account at the end of the year beginning 1st April 1989 as is not carried to the credit of their Housing Revenue Account for that year shall be carried forward and credited to some other revenue account of theirs for the year beginning 1st April 1990.

## **78 Directions to secure proper accounting**

The Secretary of State may give directions as to the accounting practices (whether actual or prospective) which are to be followed by a local housing authority in the keeping of their Housing Revenue Account or Housing Repairs Account.

### *Housing subsidies*

## **79 Housing Revenue Account subsidy**

- (1) Housing Revenue Account subsidy shall be payable for each year to local housing authorities.
- (2) Housing Revenue Account subsidy shall be paid by the Secretary of State at such times, in such manner and subject to such conditions as to records, certificates, audit or otherwise as he may, with the agreement of the Treasury, determine.
- (3) Sections 421 to 427A of the Housing Act 1985 (which are superseded, in their application to local housing authorities, by this section and sections 80 and 86 below) shall cease to apply in relation to such authorities.

## **80 Calculation of Housing Revenue Account subsidy**

- (1) The amount of Housing Revenue Account subsidy (if any) payable to a local housing authority for a year shall be calculated in accordance with such formulae as the Secretary of State may from time to time determine; and for any year the first such

determination shall be made before the 25th December immediately preceding that year.

- (2) If the amount so calculated is a negative amount, the authority shall for that year carry the equivalent positive amount from their Housing Revenue Account to the credit of some other revenue account of theirs.
- (3) In determining a formula for the purposes of this section for any year, the Secretary of State may include variables framed (in whatever way he considers appropriate) by reference to—
  - (a) any amounts which fall to be or were credited or debited to the authority's Housing Revenue Account for that year or any previous year;
  - (b) any amounts which, on such assumptions as the Secretary of State may determine (whether or not borne out or likely to be borne out by events), would fall to be or would have been so credited or debited; and
  - (c) such other matters relating to the authority, or to (or to tenants of) houses and other property which are or have been within the account, as he thinks fit;
 and the Secretary of State may make any determination falling to be made for the purposes of a formula on the basis of information received by him on or before such date as he thinks fit.
- (4) Without prejudice to the generality of subsection (3) above, a formula may require it to be assumed that the amount for any year of the rental income or housing expenditure of each authority (or each authority in England or in Wales) is to be determined—
  - (a) by taking the amount which the Secretary of State considers (having regard, amongst other things, to past and expected movements in incomes, costs and prices) should be or should have been the aggregate amount for that year of the rental incomes or, as the case may be, the housing expenditure of all of the authorities (or all of the authorities in England or Wales) taken together; and
  - (b) by apportioning that amount between them in such manner as the Secretary of State considers appropriate (which may involve, if he thinks fit, inferring the aggregate values of the houses and other property within their respective Housing Revenue Accounts from the average values of any of the houses and other property which they have disposed of);

and in this subsection “rental income” means income falling within item 1 of Part I of Schedule 4 to this Act and “housing expenditure” means expenditure falling within item 1 of Part II of that Schedule or falling to be debited to the authorities' Housing Repairs Accounts.

## **81 Consequential adjustment of rent rebate subsidy**

- (1) In subsection (2) of section 30 of the Social Security Act 1986 (housing benefit finance), for the words “total housing benefit” there shall be substituted the words “relevant benefit” and there shall be added at the end the words “and in this subsection “relevant benefit” means total housing benefit excluding, in the case of a local authority in England and Wales, any Housing Revenue Account rebates granted by them”.
- (2) In subsection (5)(a) of that section, for sub-paragraphs (i) and (ii) there shall be substituted the words “for the credit of a revenue account of theirs which is not a Housing Revenue Account or Housing Repairs Account”.
- (3) For subsection (6) of that section there shall be substituted the following subsection—

“(6) Every local housing authority shall for each year carry to the credit of their Housing Revenue Account from some other revenue account of theirs which is not a Housing Repairs Account an amount equal to the aggregate of—

- (a) so much of each Housing Revenue Account rebate granted by them during the year as was granted in the exercise of a discretion conferred by the housing benefit scheme or in pursuance of such modifications of that scheme as are mentioned in paragraph (b) of subsection (6) of section 28 above (general modifications); and
- (b) unless the authority otherwise determine, so much of each such rebate as was granted in pursuance of such modifications of that scheme as are mentioned in paragraph (a) of that subsection (modifications for disregarding war disablement pensions or war widows' pensions).”

- (4) In subsection (10) of that section, the words “rate fund” shall cease to have effect.
- (5) In section 84(1) of that Act (general interpretation), in the definition of “Housing Revenue Account dwelling” for the words from “Part XIII of the Housing Act 1985)” to the end there shall be substituted the words “Part VI of the Local Government and Housing Act 1989)”.

## **82 Residual debt subsidy for year 1989–90**

- (1) Where, in the case of any local housing authorities to whom no housing subsidy is payable for the year beginning 1st April 1989, houses or other property within their respective Housing Revenue Accounts—
  - (a) are disposed of in that year, or
  - (b) are in that year the subject of such other transactions as the Secretary of State may determine,residual debt subsidy shall be payable for that year to those authorities in respect of costs relating to the houses or other property.
- (2) Residual debt subsidy shall be paid by the Secretary of State at such times, in such manner and subject to such conditions as to records, certificates, audit or otherwise as he may, with the agreement of the Treasury, determine.
- (3) Payment of residual debt subsidy shall be subject to the making of a claim for it in such form, and containing such particulars, as the Secretary of State may from time to time determine.
- (4) Residual debt subsidy paid to a local housing authority shall be credited to the authority's Housing Revenue Account and, accordingly, for the year beginning 1st April 1989 the reference to housing subsidy in item 3 in Part I of Schedule 14 to the Housing Act 1985 shall be taken to include a reference to residual debt subsidy.

## **83 Calculation of residual debt subsidy**

- (1) The amount of the residual debt subsidy (if any) payable to a local housing authority shall be calculated—
  - (a) in accordance with such formulae as the Secretary of State may from time to time determine; and
  - (b) by reference to such houses or other property as the Secretary of State may for the time being determine.

- (2) A determination of the Secretary of State under this section may relate to disposals or other transactions which occur before the making of the determination.

#### **84 Adjustment of housing subsidy for year 1989-90**

- (1) In any case where, apart from this subsection and subsection (2) below, the amount of housing subsidy payable to a local housing authority for the year beginning 1st April 1989 would be reduced or extinguished as a result of the transfer from the authority to a housing action trust of housing, land or other property as mentioned in section 74 of the Housing Act 1988, the Secretary of State, in the exercise of his power under section 423(2) of the Housing Act 1985, may adjust the authority's base amount for that year to take account of the effect of that transfer.
- (2) If, in accordance with subsection (1) above, the Secretary of State can make an adjustment of a local housing authority's base amount for the year beginning 1st April 1989 to take account of a transfer of housing, land or other property to a housing action trust, he may, instead of or as well as making such an adjustment, take account of the effect of the transfer in the making or varying of any determination for that year under section 424 (housing costs differential) or in the making of any determination under section 425 (local contribution differential) of the Housing Act 1985.
- (3) Subsections (1) and (2) above shall be deemed to have been in force so as to be applicable for the year beginning 1st April 1989.

#### *Supplementary*

#### **85 Power to obtain information**

- (1) A local housing authority, and any officer or employee of a local housing authority concerned with their housing functions, shall supply the Secretary of State with such information as he may specify, either generally or in any particular case, for the purpose of enabling the Secretary of State to exercise his functions under section 80 or 83 above.
- (2) A local housing authority shall supply the Secretary of State with such certificates supporting the information required by him as he may specify.
- (3) If a local housing authority, or any officer or employee of a local housing authority concerned with their housing functions, fails to comply with subsection (1) or (2) above before the end of such period as the Secretary of State may specify, he may exercise his functions under section 80 or 83 above on the basis of such assumptions and estimates as he sees fit.

#### **86 Recoupment of subsidy in certain cases**

- (1) Where Housing Revenue Account subsidy or residual debt subsidy has been paid to a local housing authority and it appears to the Secretary of State that the case falls within rules published by him, he may recover from the authority the whole or such part of the payment as he may determine in accordance with the rules, with interest from such time and at such rates as he may so determine.
- (2) Without prejudice to other methods of recovery, a sum recoverable under this section may be recovered by withholding or reducing subsidy.

**87 Determinations and directions**

- (1) A determination made or direction given by the Secretary of State under this Part—
  - (a) may make different provision for different cases or descriptions of cases, including different provision for different areas, for different local housing authorities or for different descriptions of local housing authorities;
  - (b) may be made before, during or after the end of the year to which it relates; and
  - (c) may be varied or revoked by a subsequent determination or direction.
- (2) Before making a determination or giving a direction under this Part relating to all local housing authorities or any description of such authorities, the Secretary of State shall consult such representatives of local government and relevant professional bodies as appear to him to be appropriate; and, before making a determination or giving a direction relating to a particular local housing authority, he shall consult that authority.
- (3) As soon as practicable after making a determination under this Part, the Secretary of State shall send a copy of the determination to the local housing authority or authorities to which it relates.

**88 Construction and application of Part VI**

- (1) In this Part—
  - (a) expressions which are used in Part XIII of the Housing Act 1985 (general financial provisions) have the same meaning as in that Part;
  - (b) references to a local housing authority's Housing Revenue Account or Housing Repairs Account include, where the context so admits, references to the corresponding account kept by them under that Part;
  - (c) references to a revenue account of a local housing authority other than their Housing Revenue Account do not include references to a Housing Repairs Account; and
  - (d) references to proper practices shall be construed in accordance with section 66(4) above.
- (2) Sections 82 to 84 above and, so far as relating to those sections or residual debt subsidy, this section and sections 85 to 87 above, have effect for the year beginning on 1st April 1989.
- (3) Subject to subsection (2) above, this Part has effect for years beginning on or after 1st April 1990.
- (4) If, before the passing of this Act, any statement was made by or on behalf of the Secretary of State—
  - (a) that, if this Part were then in force, he would make, under section 83 above, such a determination as is set out in the statement, and
  - (b) that, when this Act is passed, he is to be regarded as having made under that section the determination set out in the statement,the determination set out in the statement shall have effect as if it had been validly made under section 83 above at the time of the statement.
- (5) Any consultation undertaken—
  - (a) before the passing of this Act, and
  - (b) before the making of such a statement as is referred to in subsection (4) above, and

- (c) in connection with a determination proposed to be set out in the statement, shall be as effective, in relation to that determination, as if this Part had been in force at the time the consultation was undertaken.
- (6) Any consultation undertaken before the passing of this Act in connection with a determination proposed to be made under this Part shall be as effective, in relation to that determination, as if this Part had been in force at the time the consultation was undertaken.

## PART VII

### RENEWAL AREAS

#### 89 Declaration of renewal area

- (1) Where a local housing authority, upon consideration of such a report as is mentioned in subsection (3) below and of any other matters which the authority consider relevant, are satisfied—
  - (a) that the living conditions in an area within their district consisting primarily of housing accommodation are unsatisfactory, and
  - (b) that those conditions can most effectively be dealt with by declaring the area to be a renewal area,
 then, subject to the following provisions of this Part, they may cause the area to be defined on a map and by resolution declare it to be a renewal area.
- (2) A renewal area may not include—
  - (a) any land which lies within a designated area, within the meaning of Part III of the Housing Act 1988 (housing action trusts); or
  - (b) any parcel of land which is not contiguous with another parcel of land within the area.
- (3) The report referred to in subsection (1) above is one prepared, at the request of the local housing authority, by a person appearing to the authority to be suitably qualified (who may be an officer of the authority) and shall include particulars of the following matters—
  - (a) the living conditions in the area concerned;
  - (b) the ways in which those conditions may be improved (whether by the declaration of a renewal area or otherwise);
  - (c) the powers available to the authority if the area is declared to be a renewal area;
  - (d) the authority's detailed proposals for the exercise of those powers during the period that the area will be a renewal area (if so declared);
  - (e) the cost of those proposals; and
  - (f) the financial resources available, or likely to be available, to the authority (from whatever source) for implementing those proposals;
 and the report shall contain a recommendation, with reasons, as to whether a renewal area should be declared.



- (4) In considering whether to declare an area to be a renewal area, a local housing authority shall have regard to such guidance as may from time to time be given by the Secretary of State.
- (5) Before exercising their power to declare an area to be a renewal area, a local housing authority shall take such steps as the Secretary of State may direct with respect to—
  - (a) the publicity to be given to the proposed exercise of the power;
  - (b) the persons from whom representations with respect to that proposed exercise are to be invited; and
  - (c) the consideration of any such representations.
- (6) Subject to section 95 below, an area which is declared to be a renewal area shall be such an area for the period of ten years.
- (7) A resolution declaring an area to be a renewal area has effect from the day on which it is passed and is a local land charge.

## **90 Conditions for declaration of renewal area**

- (1) An area may not be declared to be a renewal area unless,—
  - (a) the area contains not less than a specified minimum number of dwellings;
  - (b) of the dwellings in the area, not less than a specified proportion are privately owned;
  - (c) such conditions as may be specified with respect to the physical condition of the dwellings in the area and the financial circumstances of those living in the area are fulfilled; and
  - (d) such other conditions as may be specified are fulfilled;and in this subsection “specified” means specified by directions made by the Secretary of State.
- (2) For the purposes of subsection (1)(b) above, a dwelling is privately owned unless a freehold or a leasehold interest in it is held by—
  - (a) a local authority;
  - (b) a new town corporation;
  - (c) an urban development corporation;
  - (d) a housing action trust; or
  - (e) the Development Board for Rural Wales.
- (3) Expressions used in paragraphs (a) to (d) of subsection (2) above have the meaning assigned by section 4 of the Housing Act 1985.
- (4) In this section “dwelling” includes a house in multiple occupation.

## **91 Steps to be taken after declaration of renewal area**

- (1) As soon as may be after declaring an area to be a renewal area a local housing authority shall—
  - (a) publish in two or more newspapers circulating in the locality (of which one at least shall, if practicable, be a local newspaper) a notice of the resolution identifying the area and naming a place where a copy of the resolution, the map

on which the renewal area is defined and the report referred to in section 89 above may be inspected at all reasonable times;

- (b) take such further steps as appear to the authority best designed to secure that the resolution is brought to the attention of persons residing or owning property in the area and that those persons are informed of the name and address of the person to whom should be addressed inquiries and representations concerning action to be taken with respect to the renewal area;
  - (c) provide, or secure the provision of, a service of information and advice to persons residing or owning property in the area who wish to carry out works to housing accommodation in the area; and
  - (d) send to the Secretary of State the documents specified in subsection (2) below.
- (2) The documents mentioned in subsection (1)(d) above are—
- (a) a copy of the resolution, the map on which the renewal area is defined and the report referred to in section 89 above; and
  - (b) a statement containing such information, relating to the declaration of the renewal area or the local housing authority's proposals for the area, as the Secretary of State may for the time being require, either generally or with respect to authorities in a particular area or in any particular case.

## **92 Duty to publish information**

- (1) Where a local housing authority have declared an area to be a renewal area, they shall from time to time publish, in such manner as appears to them best designed to secure that the information is brought to the attention of persons residing or owning property in the area, information with respect to—
- (a) the action they propose to take in relation to the area,
  - (b) the action they have taken in relation to the area, and
  - (c) the assistance available for the carrying out of works in the area,
- being such information as appears to them best designed to further the purpose for which the area was declared a renewal area.
- (2) In exercising their functions under subsection (1) above, a local housing authority shall comply with such directions (relating to any of the matters mentioned in that subsection) as may from time to time be given by the Secretary of State.

## **93 General powers of local housing authority**

- (1) Where a local housing authority have declared an area to be a renewal area, the authority may exercise the powers conferred by this section.
- (2) For the purpose of securing or assisting in securing all or any of the objectives mentioned in subsection (3) below, the authority may acquire by agreement, or be authorised by the Secretary of State to acquire compulsorily, any land in the area on which there are premises consisting of or including housing accommodation or which forms part of the curtilage of any such premises; and the authority may provide housing accommodation on land acquired under this subsection.
- (3) The objectives referred to in subsection (2) above are—
- (a) the improvement or repair of the premises, either by the authority or by a person to whom they propose to dispose of the premises;

- (b) the proper and effective management and use of the housing accommodation, either by the authority or by a person to whom they propose to dispose of the premises comprising the accommodation; and
  - (c) the well-being of the persons for the time being residing in the area.
- (4) For the purpose of effecting or assisting the improvement of the amenities in the area, the authority may acquire by agreement, or be authorised by the Secretary of State to acquire compulsorily, any land in the area (including land which the authority propose to dispose of to another person who intends to effect or assist the improvement of those amenities).
- (5) The authority may—
  - (a) carry out works (including works of demolition) on land owned by the authority in the area (whether or not that land was acquired under subsection (2) or subsection (4) above); and
  - (b) assist in the carrying out of works on any land in the area not owned by the authority, either by providing grants, loans or guarantees or by incurring expenditure for the benefit of the person assisted or by executing the works themselves or by providing materials for the carrying out of the works;

but assistance may not be given under paragraph (b) above in respect of works for which assistance is being or has been provided under Part VIII of this Act.
- (6) The authority may enter into an agreement with a housing association or other person under which, in accordance with the terms of the agreement, all or any of the authority's functions under subsection (5) above are to be exercisable by that association or other person.
- (7) If after—
  - (a) the authority have entered into a contract for the acquisition of land under subsection (2) or subsection (4) above, or
  - (b) a compulsory purchase order authorising the acquisition of land under either of those subsections has been confirmed,

the renewal area concerned ceases to be such an area or the land is excluded from the area, the provisions of the subsection in question shall continue to apply as if the land continued to be in a renewal area.
- (8) The powers conferred by this section are without prejudice to any power which a local housing authority may have under or by virtue of any other enactment.

## **94 Power to apply for orders extinguishing right to use vehicles on highway**

- (1) A local housing authority who have declared a renewal area may exercise the powers of a local planning authority under section 212 of the Town and Country Planning Act 1971 (extinguishment of right to use vehicles on certain highways) with respect to a highway in that area notwithstanding that they are not the local planning authority, but subject to the following provisions.
- (2) The local housing authority shall not make an application under subsection (2) or subsection (8) of that section (application to Secretary of State to make or revoke order extinguishing right to use vehicles) except with the consent of the local planning authority.

- (3) If the local housing authority are not also the highway authority, any such application made by them shall in the first place be sent to the highway authority who shall transmit it to the Secretary of State.
- (4) Where an order under subsection (2) of that section (order extinguishing right to use vehicles) has been made on an application made by a local housing authority by virtue of this section, any compensation under subsection (5) of that section (compensation for loss of access to highway) is payable by them instead of by the local planning authority.

## **95 Exclusion of land from, or termination of, renewal area**

- (1) Subject to subsection (2) below, a local housing authority may by resolution—
  - (a) exclude land from a renewal area; or
  - (b) declare that an area shall cease to be a renewal area;
 and as soon as may be after passing such a resolution the authority shall take the steps required by subsections (3) to (5) below.
- (2) Before exercising any power under subsection (1) above, an authority shall take such steps as the Secretary of State may direct with respect to—
  - (a) the publicity to be given to the proposed exercise of the power;
  - (b) the persons from whom representations with respect to that proposed exercise are to be invited; and
  - (c) the consideration of any such representations.
- (3) The authority shall send to the Secretary of State—
  - (a) a copy of the resolution; and
  - (b) such other information with respect to the resolution as the Secretary of State may specify either generally or in any particular case.
- (4) The authority shall publish in two or more newspapers circulating in the locality (of which one at least shall, if practicable, be a local newspaper) a notice of the resolution—
  - (a) identifying the renewal area;
  - (b) describing the effect of the resolution;
  - (c) naming a place at which a copy of the resolution may be inspected at all reasonable times; and
  - (d) in the case of a resolution excluding land, identifying the land excluded from the renewal area.
- (5) The authority shall take such further steps as appear to them best designed to secure that the resolution is brought to the attention of persons residing or owning property in the renewal area.
- (6) A resolution under subsection (1) above has effect from the day on which it is passed.
- (7) A resolution under subsection (1) above does not affect the continued operation of the provisions of this Part, or any other enactment relating to renewal areas, in relation to works begun before the date on which the exclusion or cessation takes effect; but the resolution does have effect with respect to works which have not been begun before that date, notwithstanding that expenditure in respect of the works has been approved before that date.

**96 Contributions by the Secretary of State**

- (1) The Secretary of State may pay contributions to local housing authorities towards such expenditure incurred by them under this Part as he may determine.
- (2) The rate or rates of the contributions, the calculation of the expenditure to which they relate and the manner of their payment shall be such as may be determined by the Secretary of State with the consent of the Treasury; and any determination under this subsection or subsection (1) above may be made generally, or with respect to a particular local housing authority or description of authority, including a description framed by reference to authorities in a particular area.
- (3) Contributions under this section shall be payable subject to such conditions as to records, certificates, audit or otherwise as the Secretary of State may, with the approval of the Treasury, impose.
- (4) If, before the declaration of a renewal area, a local housing authority are satisfied that the rate of contributions which, in accordance with a determination under subsection (2) above, would otherwise be applicable to the authority will not be adequate, bearing in mind the action they propose to take with regard to the area, they may, before making the declaration, apply to the Secretary of State for contributions at a higher rate in respect of that area.
- (5) An application under subsection (4) above shall be made in such form and shall contain such particulars as the Secretary of State may determine; and, if such an application is made, the authority shall not declare the area concerned to be a renewal area until the application is approved, refused or withdrawn.
- (6) If an application under subsection (4) above is approved, the Secretary of State may pay contributions under subsection (1) above in respect of the area concerned at such higher rate as he may determine under subsection (2) above.

**97 Powers of entry and penalty for obstruction**

- (1) A person authorised by the local housing authority or the Secretary of State may at any reasonable time, on giving not less than seven days' notice of his intention to the occupier, and to the owner if the owner is known, enter premises—
  - (a) for the purpose of survey and examination where it appears to the authority or the Secretary of State that survey or examination is necessary in order to determine whether any powers under this Part should be exercised; or
  - (b) for the purpose of survey or valuation where the authority are authorised by this Part to acquire the premises compulsorily.
- (2) An authorisation for the purposes of this section—
  - (a) shall be in writing stating the particular purpose or purposes for which the entry is authorised; and
  - (b) shall, if so required, be produced for inspection by the occupier or anyone acting on his behalf.
- (3) It is a summary offence intentionally to obstruct an officer of the local housing authority or of the Secretary of State, or a person authorised to enter premises under subsection (1) above, in the performance of anything which that officer, authority or person is by this Part required or authorised to do.

- (4) A person who commits an offence under subsection (3) above is liable on conviction to a fine not exceeding level 3 on the standard scale.
- (5) In this section “owner”, in relation to premises,—
  - (a) means a person (other than a mortgagee not in possession) who is for the time being entitled to dispose of the fee simple in the premises, whether in possession or reversion, and
  - (b) includes also a person holding or entitled to the rents and profits of the premises under a lease of which the unexpired term exceeds three years.

## 98 Part VIII of Housing Act 1985

- (1) The provisions of this Part have effect in place of Part VIII of the Housing Act 1985 (housing action areas and general improvement areas) and, accordingly, after the appointed day, a local housing authority shall no longer have power under that Part to declare an area a housing action area or a general improvement area.
- (2) If, apart from this subsection, a general improvement area would remain in existence on the first anniversary of the appointed day, the area shall, by virtue of this section cease to be a general improvement area on that first anniversary.
- (3) In any case where, immediately before the appointed day, the period for which a housing action area has effect exceeds two years, the duration of that area shall, by virtue of this section, be such that, subject to subsection (4) below, it ends on the first anniversary of the appointed day.
- (4) Nothing in subsection (3) above affects the power of a local housing authority,—
  - (a) by resolution under section 250(1)(b) of the Housing Act 1985, to bring a housing action area to an end; or
  - (b) by resolution under section 251 of that Act, to extend, on one occasion only, the duration of a housing action area by a period of two years.
- (5) In the application of section 245 of the Housing Act 1985 (contributions by Secretary of State towards expenditure of local housing authorities relating to environmental works in housing action areas) in relation to expenditure—
  - (a) which was incurred on or after 14th June 1989, and
  - (b) in respect of which no contribution under that section was paid before the appointed day,
 for subsection (2) of that section there shall be substituted the following subsection—
  - “(2) In the case of any expenditure, the contribution—
    - (a) shall be equal to one-half of the amount of the expenditure; and
    - (b) shall be payable in one sum or by two or more instalments, according as the Secretary of State may determine.”
- (6) In the application of section 259 of the Housing Act 1985 (contributions by Secretary of State towards expenditure of local housing authorities relating to general improvement areas) in relation to expenditure—
  - (a) which was incurred on or after 14th June 1989, and
  - (b) in respect of which no contribution under that section was paid before the appointed day,
 for subsection (2) of that section there shall be substituted the following subsection—

“(2) In the case of any expenditure, the contribution—

- (a) shall be equal to one-half of the amount of the expenditure; and
- (b) shall be payable in one sum or by two or more instalments, according as the Secretary of State may determine.”

(7) In the preceding provisions of this section “the appointed day” means the day appointed for the coming into force of this section.

## **99 Directions and guidance**

Any power under this Part to give directions or guidance may be so exercised as to make different provision for different cases, different descriptions of cases and different areas and, in particular, with respect to different local housing authorities or descriptions of authority (including a description framed by reference to authorities in a particular area).

## **100 Interpretation of Part VII**

(1) In this Part, except where the context otherwise requires,—

“dwelling” means a building or part of a building occupied or intended to be occupied as a separate dwelling, together with any yard, garden, outhouses and appurtenances belonging to or usually enjoyed with it;

“house in multiple occupation” has the same meaning as in Part XI of the Housing Act 1985, except that it does not include any part of such a house which is occupied as a separate dwelling by persons who do form a single household;

“housing accommodation” means dwellings, houses in multiple occupation and hostels;

“local housing authority” and any reference to the district of such an authority shall be construed in accordance with sections 1 and 2 of the Housing Act 1985.

(2) Part XVII of the Housing Act 1985 (compulsory purchase and land compensation) applies in relation to this Part as if it were contained in that Act.

# **PART VIII**

## **GRANTS TOWARDS COST OF IMPROVEMENTS AND REPAIRS ETC.**

### *Introductory*

## **101 Grants for improvements and repairs**

(1) In accordance with this Part, grants are payable by local housing authorities towards the cost of works required—

- (a) for the improvement or repair of dwellings, houses in multiple occupation or the common parts of buildings containing one or more flats; and
- (b) for the provision of dwellings or houses in multiple occupation by the conversion of a house or other building; and

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- (c) for the provision of facilities for disabled persons in dwellings and in the common parts of buildings containing one or more flats.

(2) In this Part—

- (a) a grant relating to the improvement or repair of a dwelling or to the provision of dwellings by the conversion of a house or other building is referred to as a “renovation grant”; and
- (b) a grant relating to the improvement or repair of the common parts of a building is referred to as a “common parts grant”; and
- (c) a grant for the provision of facilities for a disabled person in a dwelling or in the common parts of a building containing one or more flats is referred to as a “disabled facilities grant”; and
- (d) a grant for the improvement or repair of a house in multiple occupation or for the provision of a house in multiple occupation by the conversion of a house or other building is referred to as an “HMO grant”;

and in the following provisions of this Part the expression “grant”, without more, means any of these types of grant.

(3) No grant is payable under this Part if the person who would otherwise qualify as the applicant for the grant is—

- (a) a local authority;
- (b) a new town corporation;
- (c) an urban development corporation;
- (d) a housing action trust;
- (e) the Development Board for Rural Wales;
- (f) a joint authority established by Part IV of the Local Government Act 1985;
- (g) a residuary body established by Part VII of that Act; or
- (h) an authority established under section 10(1) of that Act (waste disposal).

(4) Expressions used in paragraphs (a) to (d) of subsection (3) above have the meanings assigned by section 4 of the Housing Act 1985.

(5) The provisions of this Part have effect in place of the provisions of Part XV of the Housing Act 1985 (grants for works of improvement, repair and conversion), other than section 523 thereof (assistance for provision of separate service pipe for water supply), and, without prejudice to the generality of subsection (3) of section 195 below,

- (a) any application made under section 461 of that Act which has not been approved by the local housing authority before the day appointed under section 195 below for the coming into force of this section shall be of no effect on and after that day; and
- (b) any application under section 521 of that Act (schemes for grants for thermal insulation) in respect of which the applicant has not been notified before the day so appointed that he may proceed to execute works in accordance with a scheme under that section shall be of no effect on and after that day.

## **102 Applications for grants**

(1) No grant shall be paid unless an application for it is made to the local housing authority concerned in accordance with the provisions of this Part and is approved by them.



- (2) An application for a grant shall be in writing and shall specify the premises to which it relates and contain—
  - (a) particulars of the works in respect of which the grant is sought (in this Part referred to as “the relevant works”);
  - (b) unless the local housing authority otherwise direct in any particular case, at least two estimates from different contractors of the cost of carrying out the relevant works;
  - (c) particulars of any preliminary or ancillary services and charges in respect of the cost of which the grant is also sought; and
  - (d) such other particulars as may be prescribed.
- (3) In this Part “preliminary or ancillary services and charges”, in relation to an application for a grant, means services and charges which—
  - (a) relate to the application and the preparation for and the carrying out of works; and
  - (b) are specified for the purposes of this subsection by the Secretary of State.
- (4) The Secretary of State may by regulations prescribe a form of application for a grant and an application for a grant to which any such regulations apply shall not be validly made unless it is in the prescribed form.

#### *Preliminary conditions*

### **103 The age of the property**

- (1) A local housing authority may not entertain an application for a grant, other than a disabled facilities grant, unless they are satisfied that, at the date of the application, the dwelling, common parts or house or other building concerned was provided not less than the relevant period before that date.
- (2) In subsection (1) above—
  - (a) “provided” means provided by construction or conversion; and
  - (b) “the relevant period” means ten years or such other period as the Secretary of State may by order provide.

### **104 The interest of the applicant in the property**

- (1) Subject to subsection (4) and section 136 below, a local housing authority may not entertain an application for a grant, other than a common parts grant, unless they are satisfied that—
  - (a) the applicant has, or proposes to acquire, an owner’s interest in every parcel of land on which the relevant works are to be carried out; or
  - (b) in the case of an application for a renovation grant (other than an application in respect of works required for the provision of one or more dwellings by the conversion of a house or other building), the applicant is a tenant of the dwelling (alone or jointly with others) but does not have, or propose to acquire, an owner’s interest in the dwelling; or
  - (c) in the case of an application for a disabled facilities grant in respect of works to a dwelling, the applicant is a tenant of the dwelling (alone or jointly with

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others) but does not have, or propose to acquire, an owner's interest in the dwelling; or

- (d) in the case of an application for a disabled facilities grant in respect of works to the common parts of a building containing one or more flats, the applicant is a tenant of a flat in the building (alone or jointly with others) but does not have, or propose to acquire, such an owner's interest as is referred to in paragraph (a) above;

and references in this Part to an "owner's application" or a "tenant's application" shall be construed accordingly.

- (2) In this Part "owner's interest" means an interest which—
  - (a) is held by the applicant alone or jointly with others; and
  - (b) is either an estate in fee simple absolute in possession or a term of years absolute of which not less than five years remain unexpired at the date of the application.
- (3) Where a local housing authority entertain an owner's application made by a person who proposes to acquire the necessary interest, they shall not approve the application until they are satisfied that he has done so.
- (4) In accordance with directions given by the Secretary of State, a local housing authority may treat the condition in subsection (1)(a) above as fulfilled by a person who has, or proposes to acquire, an owner's interest in only part of the land concerned; and directions under this subsection may make different provision with respect to different cases or descriptions of cases, including different provision for different areas.
- (5) A local housing authority may not entertain a tenant's application unless—
  - (a) the tenant is required by the terms of his tenancy to carry out the relevant works and his tenancy is not of a description excluded from this subsection by an order made by the Secretary of State; or
  - (b) his tenancy is of a description specified for the purposes of this subsection by an order made by the Secretary of State; or
  - (c) his application is for a disabled facilities grant.

## **105 Common parts grants: preliminary conditions**

- (1) A local housing authority may not entertain an application for a common parts grant unless they are satisfied—
  - (a) that, at the date of the application, at least the required proportion of the flats in the building concerned is occupied by occupying tenants; and
  - (b) that the application is either a landlord's common parts application or a tenants' common parts application.
- (2) In this Part—
  - (a) an "occupying tenant", in relation to a flat in a building, is a person—
    - (i) who has (alone or jointly with others) such an interest in the flat as is mentioned in any of paragraphs (b) to (e) of subsection (4) below; and
    - (ii) who occupies the flat as his only or main residence;
  - (b) a "landlord's common parts application", in relation to works to the common parts of a building, is an application for a common parts grant made by a person who—

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- (i) has (alone or jointly with others) such an interest in the building as is mentioned in paragraph (a) or paragraph (b) of subsection (4) below; and
  - (ii) has a duty or power to carry out the relevant works; and
- (c) a “tenants' common parts application”, in relation to works to the common parts of a building, is an application for a common parts grant made, subject to subsection (3) below, by at least three-quarters of the occupying tenants of the building who, under their tenancies, have a duty to carry out, or to make a contribution in respect of the carrying out of, some or all of the relevant works; and in any case where a tenancy is held by two or more persons jointly, those persons shall be regarded as a single occupying tenant in deciding, for the purposes of paragraph (c) above, whether the application is made by at least three-quarters of the occupying tenants referred to in that paragraph.
- (3) For the purposes of paragraph (c) of subsection (2) above, a tenant whose tenancy is of a description specified for the purpose of that paragraph by an order made by the Secretary of State shall be treated as an occupying tenant falling within that paragraph; and a person who falls within paragraph (b)(i) of that subsection and has a duty or power to carry out any of the relevant works may also join in a tenants' common parts application; and, where such a person does join in an application, he is in this Part referred to as a “participating landlord”.
- (4) The interests referred to in subsection (2) above are as follows—
  - (a) an estate in fee simple absolute in possession;
  - (b) a term of years absolute of which not less than five years remain unexpired at the date of the application;
  - (c) a tenancy to which section 1 of the Landlord and Tenant Act 1954 or Schedule 10 to this Act applies (long tenancies at low rents);
  - (d) an assured tenancy, a protected tenancy, a secure tenancy, a protected occupancy or a statutory tenancy; and
  - (e) a tenancy which satisfies such conditions as may be prescribed by order made by the Secretary of State.
- (5) The required proportion mentioned in subsection (1) above is three-quarters or such other proportion as may be—
  - (a) prescribed for the purposes of this section by an order made by the Secretary of State; or
  - (b) approved by him, in relation to a particular case or description of case, on application made by the local housing authority concerned.

## **106 Certificate as to future occupation, etc**

- (1) Subject to sections 126 and 136 below, a local housing authority may not entertain an application for a renovation grant or a disabled facilities grant unless it is accompanied by a certificate falling within one of subsections (2) to (5) below in respect of the dwelling, building or flat to which the application relates.
- (2) A certificate under this subsection (an “owner-occupation certificate”) certifies—
  - (a) that the applicant has, or proposes to acquire, an owner's interest in the dwelling or building; and

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- (b) that he, or a member of his family, intends to live in the dwelling or, as the case may be, a flat in the building as his (or that member's) only or main residence for a period of not less than twelve months beginning on the certified date.
- (3) A certificate under this subsection (a “tenant’s certificate”) certifies—
  - (a) that the applicant is a tenant of the dwelling who falls within paragraph (a) or paragraph (b) of subsection (5) of section 104 above or that his application is a tenant’s application for a disabled facilities grant; and
  - (b) that he or a member of his family intends to live in the dwelling or, as the case may be, a flat in the building as his (or that member's) only or main residence.
- (4) A certificate under this subsection (a “certificate of intended letting”) certifies that the applicant has or proposes to acquire an owner’s interest in the dwelling or building and intends to or already has let the dwelling or, as the case may be, one or more flats in the building as a residence—
  - (a) to someone other than a member of his family; and
  - (b) for a period of not less than five years beginning on the certified date; and
  - (c) except where the application relates to a disabled facilities grant, on a tenancy which is not a long tenancy.
- (5) A certificate under this subsection (a “special certificate”) certifies that the applicant has, or proposes to acquire, an owner’s interest in the dwelling or building and is an applicant of a class prescribed for the purposes of this section.
- (6) A local housing authority may not entertain a tenant’s application unless—
  - (a) it is also accompanied by a certificate of intended letting made by the person who at the time of the application is the landlord under the tenancy; or
  - (b) they consider it unreasonable in the circumstances to seek such a certificate.
- (7) A local housing authority may not entertain an application for an HMO grant unless it is accompanied by a certificate that the applicant has or proposes to acquire an owner’s interest in the house in question and intends—
  - (a) to license the use of part of it as a residence as mentioned in paragraphs (a) to (c) of subsection (4) above, or
  - (b) to let part of it as a residence as mentioned in those paragraphs,
 or has already so licensed or let part of it.
- (8) A local housing authority may not entertain an application for a common parts grant unless it is accompanied by a certificate signed by the applicant or, as the case may be, by each of the applicants which—
  - (a) specifies the interest of the applicant or, as the case may be, each of the applicants in the building or in each flat in the building; and
  - (b) certifies that the required proportion, within the meaning of section 105 above, of the flats in the building is occupied by occupying tenants.

#### *Restrictions on grant aid*

### **107 Certain dwellings and works excluded from grant aid**

- (1) In each of the cases in subsection (2) below, the local housing authority may not approve an application for a grant unless—

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- (a) it is an application which they are required to approve by virtue of section 112 below and completion of the relevant works is necessary to comply with a notice under section 189 of the Housing Act 1985 (repair notice requiring works to render premises fit for human habitation); or
  - (b) it is an application which they are required to approve by virtue of section 113 below.
- (2) The cases referred to in subsection (1) above are as follows—
  - (a) if, in the case of an application in respect of a dwelling or house which is not fit for human habitation, the local housing authority consider that the carrying out of the relevant works will not be sufficient to cause the dwelling or house to be fit for human habitation;
  - (b) if or to the extent that the relevant works have been completed before the date of service of the notice of refusal under section 116(1) below;
  - (c) if, within the period of three months beginning on the date of service of the notice of refusal, the authority intend to make a closing or demolition order relating to the dwelling, house or building under section 264 or section 265 of the Housing Act 1985;
  - (d) if, within the period of twelve months beginning on the date of service of the notice of refusal, the authority intend to declare a clearance area under section 289 of the Housing Act 1985 for an area which includes the dwelling, house or building;
  - (e) if the dwelling, house or building is or forms part of a building of a class designated under section 528 or section 559 of the Housing Act 1985 (defective dwellings), the applicant is eligible for assistance under Part XVI of that Act in respect of a defective dwelling which is or forms part of the dwelling, house or building concerned and the relevant works are, within the meaning of that Part, work required to re-instate that defective dwelling; and
  - (f) if, in the case of an application for a common parts grant, the local housing authority consider that the carrying out of the relevant works will not be sufficient to cause the building to meet the requirements mentioned in paragraphs (a) to (e) of section 604(2) of the Housing Act 1985.
- (3) Where a group repair scheme has been approved by the Secretary of State, a local housing authority may not approve an application for a grant in so far as it relates to works which will be carried out in pursuance of agreements entered into, or to be entered into, in pursuance of the scheme.
- (4) A local housing authority may not approve an application for a grant so far as it relates to works which are of a description excluded from grant aid by directions made by the Secretary of State.
- (5) Unless it is an application which they are required to approve by virtue of section 113 below, a local housing authority may not approve an application for an HMO grant so far as it relates to works—
  - (a) which relate to means of escape from fire or other fire precautions; and
  - (b) which are required to be carried out under or by virtue of any enactment (whenever passed).
- (6) If directions made by the Secretary of State under subsection (4) above specify a description of works for which grant aid is not to be available without his consent, a local housing authority may not approve an application for a grant, so far as it relates

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to works of that description, unless the Secretary of State has given his consent with respect to those works.

- (7) Directions under subsection (4) above may be made with respect to local housing authorities generally or to a particular local housing authority.
- (8) The Secretary of State may give his consent for the purposes of subsection (6) above—
  - (a) with respect to local housing authorities generally or to a particular local housing authority; or
  - (b) with respect to applications generally or to a particular description of applications.

## **108      Restriction on grants for works already begun**

- (1) Subject to subsections (2) and (3) below, a local housing authority may not approve an application for a grant if the relevant works have been commenced before the application is approved and shall serve a notice of refusal to that effect on the applicant.
- (2) Subsection (1) above does not apply to—
  - (a) an application which the local housing authority are required to approve by virtue of section 112 below if completion of the relevant works is necessary to comply with a notice under section 189 of the Housing Act 1985 (repair notice requiring works to render premises fit for human habitation); or
  - (b) an application which the local housing authority are required to approve by virtue of section 113 below.
- (3) Where the relevant works have not been completed, the authority concerned may approve the application for a grant if they are satisfied that there were good reasons for beginning the works before the application was approved.
- (4) Where an authority decide to approve an application in accordance with subsection (3) above—
  - (a) they may, with the consent of the applicant, treat the application as varied so that the relevant works are limited to those that remain to be completed at the date of the application; and
  - (b) in determining for the purposes of sections 112, 114 and 115 below the physical condition of the dwelling, common parts or house or other building concerned, they shall consider the condition of the premises at the date of the application.

## **109      Owner-occupiers and tenants**

- (1) Where an application for a grant is accompanied by an owner-occupation certificate, a tenant's certificate or a special certificate, then, if the financial resources of the applicant exceed the applicable amount, the amount of any grant which may be paid shall be reduced from what it would otherwise have been in accordance with regulations made by the Secretary of State with the consent of the Treasury.
- (2) For the purposes of this Part, the Secretary of State may by regulations made with the consent of the Treasury—
  - (a) make provision for the determination of the amount which is to be taken to be the financial resources of an applicant for a grant; and

- (b) make provision for the determination of the applicable amount referred to in subsection (1) above.
- (3) Without prejudice to the generality of subsection (2) above, regulations under this section—
  - (a) may make provision for account to be taken of the income, assets, needs and outgoings not only of the applicant himself but also of his spouse, any person living with him or intending to live with him and any person on whom he is dependent or who is dependent on him;
  - (b) may make provision for amounts specified in or determined under the regulations to be taken into account for particular purposes.

## **110 Landlords**

- (1) Subject to section 126 below, this section applies—
  - (a) where an application for a grant is accompanied by a certificate of intended letting with respect to a dwelling and is not a tenant's application; and
  - (b) where an application for an HMO grant is accompanied by a certificate under section 106(7) above; and
  - (c) where, by virtue of section 136 below, sections 104 and 106 above do not apply to an application for a grant; and
  - (d) where an application for a grant is a landlord's common parts application.
- (2) Subject to the following provisions of this section and to section 116(5) below, the amount of the grant (if any) shall be such as may be determined by the local housing authority, having regard to—
  - (a) the cost of the relevant works;
  - (b) if the dwelling is currently let or subject to a statutory tenancy, the amount of the rent payable and of any increase which might reasonably be expected in that rent to take account of the relevant works, when completed;
  - (c) if paragraph (b) above does not apply, the amount of the rent which might reasonably be expected to be obtained on a letting of the dwelling on the open market under an assured tenancy (assuming that no premium is paid); and
  - (d) such other matters as the Secretary of State may direct.
- (3) In considering the matters in paragraphs (b) and (c) of subsection (2) above, the local housing authority may seek and act upon the advice of rent officers; and, for this purpose, in section 121 of the Housing Act 1988 (additional functions of rent officers) at the end of subsection (1) there shall be added the words "and applications to which section 110 of the Local Government and Housing Act 1989 applies".
- (4) Where the applicant is a charity or the application is in respect of glebe land, the local housing authority shall also have regard—
  - (a) to any obligation or practice on the part of the applicant to let dwellings at a rent less than that which could be obtained on the open market;
  - (b) to any financial resources available to the applicant in addition to the rent from the dwelling; and
  - (c) generally to the circumstances of the applicant concerned.
- (5) In the case of an application for an HMO grant, in subsections (2) and (4) above, any reference to rent shall be construed as a reference to the aggregate of the consideration

under licences or lettings of the house in question and any reference to letting a dwelling shall be construed accordingly.

- (6) Where the application is for a grant in respect of the residence house of an ecclesiastical benefice, paragraphs (b) and (c) of subsection (2) above shall not apply and the local housing authority shall also have regard—
  - (a) to any financial resources available to the applicant; and
  - (b) generally to the circumstances of the applicant.
- (7) In a case where the application is a landlord's common parts application, each of the dwellings in the building concerned shall be taken into account under paragraph (b) or paragraph (c) of subsection (2) above so as to determine an aggregate rent for the purposes of that subsection.

## **111 Tenants' common parts applications**

- (1) This section applies where an application for a grant is a tenants' common parts application.
- (2) The local housing authority shall decide how much of the cost of the relevant works is attributable to the applicants (in this section referred to as “the attributable cost”); and, for the purposes of this section, the attributable cost is an amount equal to the proportion, referred to in subsection (3) below, of the cost of the relevant works.
- (3) The proportion mentioned in subsection (2) above is as follows—
  - (a) where it can be ascertained, the proportion that the aggregate of each of the applicant's respective liabilities to carry out or contribute to the carrying out of the relevant works bears to the aggregate of all such liabilities on the part of all persons (including the applicants) so liable; or
  - (b) where the proportion mentioned in paragraph (a) above cannot be ascertained, the proportion that the number of applicants bears to the number of persons (including the applicants) liable to carry out or contribute to the carrying out of works to the building;

and in any case where the interest by virtue of which the liability referred to in paragraph (b) above arises is held jointly by two or more persons, those persons shall be regarded as a single person in deciding for the purposes of that paragraph the number of persons so liable.
- (4) The local housing authority shall then apportion the attributable cost to each of the applicants—
  - (a) in a case where the attributable cost is calculated by reference to the proportion mentioned in paragraph (a) of subsection (3) above, according to the proportion that his liabilities to carry out or contribute to the carrying out of the relevant works bears to the aggregate of the applicants' liabilities mentioned in that paragraph; or
  - (b) in a case where the attributable cost is calculated by reference to the proportion mentioned in paragraph (b) of that subsection, equally; and the amount of grant payable shall be the aggregate of the grants that would be payable to each of the applicants under section 109 above or, in the case of a participating landlord, section 110 above if each of the applicants was an individual applicant under section 109 above or, as the case may be, section 110 above in respect of his apportionment of the attributable cost under paragraph (a) or, as the case may be, paragraph (b) above.



*Approvals, notification and payment*

**112 Duty to approve applications to render certain dwellings fit for human habitation**

- (1) Subject to the preceding provisions of this Part, on receipt of an application for a renovation grant (other than an application in respect of works required for the provision of one or more dwellings by the conversion of a house or other building), the local housing authority shall determine, with respect to the dwelling, whether the dwelling is fit for human habitation.
- (2) In any case where the local housing authority—
  - (a) determine under subsection (1) above that a dwelling is not fit for human habitation, and
  - (b) consider that completion of the relevant works will cause the dwelling to be fit for human habitation, and
  - (c) are satisfied that completion of the relevant works is the most satisfactory course of action,then, subject to subsections (4) and (5) below, they shall approve the application so far as it relates to that dwelling.
- (3) If, in the case of any application, the local housing authority consider that the relevant works include works for which assistance is available under Part XVI of the Housing Act 1985 (assistance for owners of defective housing), they shall treat the application as if the relevant works did not include those works.
- (4) If, in the case of any application, other than one to which section 113 or section 115(6) below applies, the local housing authority consider that the relevant works include works in addition to those which will cause the dwelling to be fit for human habitation (“the additional works”), they shall treat the application—
  - (a) as an application under this section in so far as it relates to works other than the additional works; and
  - (b) as an application under section 115 below in so far as it relates to the additional works;but, for the purposes of section 116 below and the subsequent provisions of this Part, the two applications shall be treated as one application.
- (5) A local housing authority shall not be under a duty under this section to approve an application—
  - (a) which is accompanied by a certificate of intended letting and is not a tenant’s application; or
  - (b) if they expect, within the period of twelve months beginning with the date of receipt of the application, to prepare a group repair scheme in respect of a building which includes or comprises the dwelling.
- (6) Section 604 of the Housing Act 1985 (fitness for human habitation) applies for the purposes of this Part, as it applies for the purposes of that Act.
- (7) In deciding whether they are satisfied as mentioned in subsection (2)(c) above, the local housing authority shall have regard to any guidance given under section 604A of the Housing Act 1985 and, for that purpose, the authority shall treat any guidance given in respect of the serving of a repair notice under section 189(1) of that Act as guidance given in respect of the completion of the relevant works.

### **113 Duty to approve applications arising out of certain statutory notices**

- (1) Subject to section 112(3) above and subsection (3) below, a local housing authority shall approve an application falling within section 110(1) above (in this section referred to as a “landlord’s application”) if completion of the relevant works is necessary to comply with a notice or notices under one or more of the following provisions—
  - (a) section 189 of the Housing Act 1985 (repair notice requiring works to render premises fit for human habitation);
  - (b) section 190 of that Act (repair notice in respect of premises in state of disrepair but not unfit); and
  - (c) section 352 of that Act (notice requiring works to render premises fit for number of occupants).
- (2) Subject to section 112(3) above and subsection (3) below, a local housing authority shall approve an application for a grant which is accompanied by an owner-occupation certificate (in this section referred to as an “owner-occupier’s application”) if completion of the relevant works is necessary to comply with a notice under section 190 of the Housing Act 1985.
- (3) If, in the case of a landlord’s application or an owner-occupier’s application, the local housing authority consider that the relevant works include works (“the additional works”) in addition to those necessary to comply with a notice under section 189, section 190 or section 352 of the Housing Act 1985, they shall treat the application—
  - (a) as an application to which this section applies in so far as it relates to works other than the additional works; and
  - (b) as an application to which section 115 below applies in so far as it relates to the additional works.

### **114 Approval of applications to provide certain facilities for the disabled**

- (1) A local housing authority shall not approve an application for a disabled facilities grant unless they are satisfied—
  - (a) that the relevant works are necessary and appropriate to meet the needs of the disabled occupant; and
  - (b) that it is reasonable and practicable to carry out the relevant works, having regard to the age and condition of the dwelling or building;and, in considering the matters specified in paragraph (a) above, the local housing authority shall consult the welfare authority.
- (2) A local housing authority shall not approve an application for a disabled facilities grant in respect of works to the common parts of a building containing one or more flats unless they are satisfied that the applicant has a power or is under a duty to carry out the relevant works.
- (3) Subject to the preceding provisions of this Part, a local housing authority shall approve an application for a disabled facilities grant if the relevant works are for any one or more of the following purposes—
  - (a) facilitating access by the disabled occupant to and from the dwelling or the building in which the dwelling or, as the case may be, flat is situated;
  - (b) facilitating access by the disabled occupant to a room used or usable as the principal family room;

- (c) facilitating access by the disabled occupant to, or providing for the disabled occupant, a room used or usable for sleeping;
  - (d) facilitating access by the disabled occupant to, or providing for the disabled occupant, a room in which there is a lavatory, bath, shower or washhand basin or facilitating the use by the disabled occupant of such a facility;
  - (e) facilitating the preparation and cooking of food by the disabled occupant;
  - (f) improving any heating system in the dwelling to meet the needs of the disabled occupant or, if there is no existing heating system in the dwelling or any such system is unsuitable for use by the disabled occupant, providing a heating system suitable to meet his needs;
  - (g) facilitating the use by the disabled occupant of a source of power, light or heat by altering the position of one or more means of access to or control of that source or by providing additional means of control; and
  - (h) facilitating access and movement by the disabled occupant around the dwelling in order to enable him to care for a person who is normally resident in the dwelling and is in need of such care.
- (4) Subject to the preceding provisions of this Part, a local housing authority may approve an application for a disabled facilities grant where the relevant works do not fall within subsection (3) above but are for the purpose of making the dwelling or building suitable for the accommodation, welfare or employment of the disabled occupant.
- (5) In this section “the disabled occupant” means the disabled person for whose benefit it is proposed to carry out any of the relevant works.
- (6) In this Part “disabled person” means—
- (a) a person who is registered in pursuance of arrangements made under section 29(1) of the National Assistance Act 1948 (handicapped persons' welfare); or
  - (b) any other person for whose welfare arrangements have been made under that provision or, in the opinion of the welfare authority, might be made under it.
- (7) For the purposes of this section, “welfare authority” means the council which is the local authority for the purposes of the Local Authority Social Services Act 1970 for the area in which the dwelling is situated.

## **115 Discretionary approval of certain applications**

- (1) Subject to the preceding provisions of this Part, a local housing authority may approve an application for a grant, other than a common parts grant, in any case where—
- (a) the relevant works go beyond or are other than those which will cause the dwelling to be fit for human habitation, but
  - (b) the authority are satisfied that the relevant works are necessary for one or more of the purposes set out in subsection (3) below.
- (2) Subject to the preceding provisions of this Part, a local housing authority may approve an application for a common parts grant if the authority are satisfied that the relevant works—
- (a) are necessary for one or more of the purposes set out in paragraphs (a) and (c) to (g) of subsection (3) below; or
  - (b) will cause the building to meet the requirements mentioned in paragraphs (a) to (e) of section 604(2) of the Housing Act 1985.

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- (3) The purposes referred to in subsection (1) above are—
- (a) to put the dwelling or building in reasonable repair;
  - (b) to provide the dwelling by the conversion of a house or other building;
  - (c) to provide adequate thermal insulation;
  - (d) to provide adequate facilities for space heating;
  - (e) to provide satisfactory internal arrangements;
  - (f) to ensure that the dwelling or building complies with such requirements with respect to construction or physical condition as may for the time being be specified by the Secretary of State for the purposes of this section; and
  - (g) to ensure that there is compliance with such requirements with respect to the provision or condition of services and amenities to or within the dwelling or building as may for the time being be so specified.
- (4) In the case of an application for an HMO grant, any reference in subsections (1) and (3) above to the dwelling shall be construed as a reference to the house.
- (5) In considering whether to approve an application for a grant in exercise of their discretion under subsection (1) or subsection (2) above, the local housing authority shall have regard to the expected life of the building (taking account, where appropriate, of the effect of carrying out the relevant works).
- (6) Subject to the preceding provisions of this Part, a local housing authority may approve an application falling within section 110(1) above (in this section referred to as a “landlord’s application”) if—
- (a) the relevant works are for the purpose of rendering the dwelling or house to which the application relates fit for human habitation, or
  - (b) in the case of an application for an HMO grant, the relevant works are for the purpose of enabling the house in question to meet one or more of the requirements in subsection (1A) of section 352 of the Housing Act 1985,
- and (in either case) the authority are satisfied that the relevant works are necessary for the purpose concerned.
- (7) If in the opinion of the local housing authority the relevant works are more or less extensive than is necessary to achieve the result referred to in paragraph (b) of subsection (2) above or any of the purposes set out in subsection (3) above or, as the case may be, the purpose falling within subsection (6) above, the authority may, with the consent of the applicant, treat the application as varied so that the relevant works are limited to or, as the case may be, include such works as seem to the authority to be necessary for that purpose.
- (8) In determining what is “reasonable repair”, in relation to a dwelling or building for the purposes of subsection (3)(a) above, a local housing authority—
- (a) shall have regard to the age and character of the dwelling or building and the locality in which it is situated; and
  - (b) shall disregard the state of internal decorative repair.
- (9) In the exercise of the powers conferred by paragraphs (f) and (g) of subsection (3) above, the Secretary of State—
- (a) may specify requirements generally or for particular cases; and
  - (b) may specify different requirements for different areas.

## **116 Approval and refusal of applications**

- (1) A local housing authority shall, by notice in writing, notify an applicant for a grant as soon as reasonably practicable, and, in any event, not later than six months after the date of the application concerned, whether the application is approved or refused.
- (2) Where an authority decide to approve an application for a grant, they shall determine—
  - (a) which of the relevant works, taking into account any variation of the application under section 108(4)(a) or section 115(7) above, are eligible for grant (in this Part referred to as “the eligible works”);
  - (b) the amount of the expenses which in their opinion are properly to be incurred in the execution of the eligible works;
  - (c) the amount of the costs which in their opinion have been or are to be properly incurred with respect to preliminary or ancillary services and charges; and
  - (d) the amount of grant they have decided to pay in respect of the eligible works, taking into account paragraphs (b) and (c) above, subsection (5) below and such of sections 109 to 115 above as may be applicable;and shall specify in the notice under subsection (1) above the eligible works, the total of the amounts referred to in paragraphs (b) and (c) above (in this Part referred to as “the estimated expense”) and the amount of the grant.
- (3) Where an application for a grant is approved, then, except—
  - (a) with the consent of the Secretary of State, or
  - (b) as provided by section 118(1) below,the local housing authority may not impose any condition in relation to the approval or making of the grant, whether purporting to operate by way of a condition of the grant, a personal covenant or otherwise; and the consent of the Secretary of State under paragraph (a) above may be given either generally or in relation to any one or more specified authorities.
- (4) If, after an application for a grant has been approved, the authority are satisfied that, owing to circumstances beyond the control of the applicant, —
  - (a) the eligible works cannot be, or could not have been, carried out on the basis of the amount of expenses referred to in subsection (2)(b) above, or
  - (b) the eligible works cannot be, or could not have been, carried out without carrying out additional works which could not have been reasonably foreseen at the time the application was made,the authority may re-determine the estimated expense and, subject to subsection (5) below, the amount of the grant.
- (5) The Secretary of State may, if he thinks fit, by order prescribe a maximum amount, or a formula for calculating a maximum amount, of grant which a local housing authority may pay in respect of an application for a grant; and an authority may not pay any grant in excess of that amount.

## **117 Payment of grants**

- (1) Where the local housing authority have approved an application for a grant, they shall pay the grant, subject to subsection (3) below and to sections 133 and 134 below.
- (2) The grant may be paid—
  - (a) in whole after the completion of the eligible works, or

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- (b) in part by instalments as the works progress and the balance after completion of the works.
- (3) The payment of a grant, or part of a grant, is conditional upon—
  - (a) the eligible works or the corresponding part of the works being executed to the satisfaction of the authority; and
  - (b) the authority being provided with an acceptable invoice, demand or receipt for payment for the works and any preliminary or ancillary services and charges in respect of which the grant or part of the grant is to be paid.
- (4) For the purposes of subsection (3) above an invoice, demand or receipt is acceptable if it satisfies the authority and is not given by the applicant or a member of his family.
- (5) Where a grant is paid by instalments, the aggregate of the instalments paid before the completion of the eligible works shall not at any time exceed nine-tenths of the amount of the grant.

#### *Conditions of grants and repayments*

### **118 Conditions as to completion of works**

- (1) In approving an application for a grant, a local housing authority may require as a condition of the grant that the eligible works are carried out in accordance with such specification as they determine.
- (2) Subject to subsection (3) below, it is a condition of the grant that the eligible works are carried out within twelve months from the date of approval of the application concerned.
- (3) The authority may, if they think fit, extend the period of twelve months referred to in subsection (2) above and may, in particular, do so where they are satisfied that the eligible works cannot be, or could not have been, carried out without carrying out other works which could not have been reasonably foreseen at the time the application was made.

### **119 Condition as to availability for letting**

- (1) This section applies where an application for a renovation grant or a disabled facilities grant, other than an application for a disabled facilities grant in respect of works to the common parts of a building containing flats, has been approved by a local housing authority and the application for the grant was accompanied by a certificate of intended letting.
- (2) It is a condition of the grant that throughout the initial period—
  - (a) the dwelling will be let or available for letting as a residence, and not for a holiday, on a tenancy which is not a long tenancy by the owner for the time being of the dwelling to a person who is not connected with him, or
  - (b) the dwelling will be occupied or available for occupation by a member of the agricultural population in pursuance of a contract of service and otherwise than as a tenant,
 disregarding any part of that period in which neither of the above paragraphs applies but the dwelling is occupied by a person who is a protected occupier under the Rent

(Agriculture) Act 1976 or is occupied under an assured agricultural occupancy, within the meaning of Part I of the Housing Act 1988.

- (3) For the purposes of subsection (2) above, a person is connected with the owner for the time being of a dwelling if,—
- (a) in a case where personal representatives or trustees are the owner, he is a person who under the will or intestacy or, as the case may be, under the terms of the trust concerned is beneficially entitled to an interest in the dwelling or to the proceeds of sale of the dwelling; and
  - (b) in any other case, he is a member of the family of the owner.
- (4) It is also a condition of the grant—
- (a) that if, at any time within the initial period, the local housing authority by whom the grant was paid serve notice on the owner of the dwelling requiring him to do so, he will, within the period of twenty-one days beginning on the date on which the notice was served, furnish to the authority a statement showing how the condition in subsection (2) above is being fulfilled; and
  - (b) that, if required to do so by the owner of the dwelling, any tenant of the dwelling will furnish the owner with such information as he may reasonably require to enable him to comply with a notice served under paragraph (a) above.
- (5) A condition under subsection (2) or subsection (4) above is a local land charge and shall, subject to subsection (9) and section 125 below, remain in force with respect to the dwelling for a period of five years from the certified date.
- (6) So long as a condition under subsection (2) or subsection (4) above remains in force with respect to a dwelling—
- (a) it is binding on any person, other than a local housing authority or registered housing association, who is for the time being the owner of the dwelling; and
  - (b) it is enforceable against all other persons having an interest in the dwelling as if it were a condition of the terms of every tenancy of, or of property including, the dwelling.
- (7) In the event of a breach of a condition under subsection (2) or subsection (4) above, the local housing authority may demand that the owner for the time being of the dwelling pay a sum equal to the amount of the grant less so much (if any) of it as has already been repaid under section 120 below, together with compound interest on that sum as from the certified date, calculated at such reasonable rate as the local housing authority may determine and with yearly rests.
- (8) The local housing authority may determine not to make such a demand or may demand a lesser amount.
- (9) On satisfaction of the liability arising from a demand under this section, the conditions under subsections (2) and (4) above and subsection (2) of section 120 below shall cease to be in force with respect to the dwelling in question.

## **120 Condition requiring repayment of grant in case of certain disposals where certificate of intended letting given**

- (1) This section applies where an application for a renovation grant (other than a tenant's application) has been approved by a local housing authority and the application for the grant was accompanied by a certificate of intended letting.

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- (2) It is a condition of the grant that—
  - (a) where an owner makes a relevant disposal (other than an exempt disposal) of the dwelling with vacant possession within the initial period, he shall pay to the local housing authority on demand the amount of the grant; and
  - (b) where an owner makes such a disposal otherwise than with vacant possession within the initial period, he shall pay to the authority on demand the amount of the grant, reduced by one-fifth for each complete year which has elapsed after the certified date and before the disposal.
- (3) A condition under subsection (2) above is a local land charge and shall, subject to subsection (5) and section 125 below, remain in force with respect to the dwelling for a period of five years from the certified date.
- (4) So long as a condition under subsection (2) above remains in force with respect to a dwelling it is binding on any person who is for the time being an owner of the dwelling.
- (5) On satisfaction of the liability arising from a demand under this section, any condition under subsection (2) above shall cease to be in force with respect to the dwelling in question.
- (6) The expressions “relevant disposal” and “exempt disposal” have the meanings assigned by section 124 below.

**121 Condition requiring repayment of grant in case of certain disposals where owner-occupation certificate given**

- (1) This section applies where an application for a renovation grant has been approved by a local housing authority and the application for the grant was accompanied by an owner-occupation certificate.
- (2) It is a condition of the grant that, where an owner makes a relevant disposal (other than an exempt disposal) of the dwelling within the period of three years beginning on the certified date, he shall pay to the authority on demand the amount of the grant, reduced by one-third for each complete year which has elapsed after the certified date and before the disposal.
- (3) A condition under subsection (2) above is a local land charge and shall, subject to subsections (5) to (7) and section 125 below, remain in force with respect to the dwelling for a period of three years from the certified date.
- (4) So long as a condition under subsection (2) above remains in force with respect to a dwelling it is binding on any person who is for the time being an owner of the dwelling.
- (5) In any case where—
  - (a) there is a relevant disposal of the dwelling concerned which is an exempt disposal; or
  - (b) there is a relevant disposal of the dwelling concerned (not being an exempt disposal) for no consideration or for consideration of an amount less than that either prescribed, or calculated in accordance with a formula prescribed, by regulations made by the Secretary of State;
 any condition under subsection (2) above shall cease to be in force with respect to the dwelling.



- (6) On satisfaction of the liability arising from a demand under this section, any condition under subsection (2) above shall cease to be in force with respect to the dwelling in question.
- (7) In any case where—
- (a) within the period referred to in subsection (2) above an owner makes a relevant disposal of the dwelling concerned (not being an exempt disposal), and
  - (b) the authority having the right to demand payment from the owner as mentioned in that subsection are satisfied that he is elderly or infirm and is making the disposal with the intention of going to live in sheltered housing or a residential care home as his only or main residence,
- the authority may determine not to make any demand under subsection (2) above and, on the making of such a determination, any condition under that subsection shall cease to be in force with respect to the dwelling.
- (8) The expressions “relevant disposal” and “exempt disposal” have the meanings assigned by section 124 below.

## **122 Conditions relating to HMO grant**

- (1) This section applies where an application for an HMO grant has been approved by a local housing authority; and in the following provisions of this section “the house” means the house to which the eligible works relate.
- (2) It is a condition of the grant that, throughout the initial period, the house will be residentially occupied or available for residential occupation, under tenancies or licences, by persons who are not connected with the owner for the time being of the house.
- (3) The references in subsection (2) above to residential occupation do not include occupation for a holiday; and subsection (3) of section 119 above applies for the purposes of subsection (2) above, substituting a reference to a house for any reference to a dwelling.
- (4) It is also a condition of the grant—
- (a) that if, at any time within the initial period, the local housing authority by whom the grant was paid serve notice on the owner of the house requiring him to do so, he will, within the period of twenty-one days beginning on the date on which the notice was served, furnish to the authority a statement showing how the condition in subsection (2) above is being fulfilled; and
  - (b) that, if required to do so by the owner of the house, any tenant or licensee in residential occupation of the house will furnish the owner with such information as he may reasonably require to enable him to comply with a notice served under paragraph (a) above.
- (5) In any case where—
- (a) there is, with respect to the house, a breach of a condition under subsection (2) or subsection (4) above, or
  - (b) at any time within the initial period the local housing authority have given a direction under section 354 of the Housing Act 1985 (power to limit number of occupants of house) with respect to the house and that direction has not been revoked or varied under section 357 of that Act,

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the authority may demand that the owner for the time being of the house pay a sum equal to the amount of the grant, together with compound interest on that sum as from the certified date, calculated at such reasonable rate as the authority may determine and with yearly rests: but the authority may determine not to make such a demand or may demand a lesser amount.

- (6) It is also a condition of the grant that, if an owner makes a relevant disposal of the house (other than an exempt disposal) within the initial period, he shall pay to the local housing authority on demand the amount of the grant.
- (7) A condition under any of subsections (2), (4) and (6) above (in the following provisions of this section referred to as “an HMO condition”) is a local land charge and, subject to subsection (9) and section 125 below, shall remain in force with respect to the house for a period of five years from the certified date.
- (8) So long as an HMO condition remains in force with respect to a house it is binding on any person, other than a local housing authority or registered housing association, who is for the time being an owner of the house.
- (9) On satisfaction of the liability arising from a demand under subsection (5) or subsection (6) above, any HMO condition shall cease to be in force with respect to the house.
- (10) The expressions “relevant disposal” and “exempt disposal” have the meanings assigned by section 124 below.

### **123 Condition requiring repayment of grant on certain disposals in case of landlord’s common parts application**

- (1) This section applies where a landlord’s common parts application has been approved by a local housing authority.
- (2) It is a condition of the grant that where the applicant makes a relevant disposal (other than an exempt disposal) of the building within the initial period, he shall pay to the local housing authority on demand the amount of the grant.
- (3) A condition under subsection (2) above is a local land charge and shall, subject to subsection (5) and section 125 below, remain in force with respect to the building for a period of five years from the certified date.
- (4) So long as a condition under subsection (2) above remains in force with respect to a building it is binding on any person who is for the time being a successor in title to that interest in the building by virtue of which, under section 105(2)(b) above, the applicant made his application.
- (5) On satisfaction of the liability arising from a demand under this section, any condition under subsection (2) above shall cease to be in force with respect to the building in question.
- (6) The expressions “relevant disposal” and “exempt disposal” have the meanings assigned by section 124 below.

## **124 Meaning of relevant disposal and exempt disposal for the purposes of sections 120 to 123**

- (1) A disposal, whether of the whole or part of the dwelling, is a relevant disposal for the purposes of sections 120 to 123 above if it is—
  - (a) a conveyance of the freehold or an assignment of the lease, or
  - (b) the grant of a lease (other than a mortgage term) for a term of more than 21 years otherwise than at a rack rent.
- (2) For the purposes of subsection (1)(b) above it shall be assumed—
  - (a) that any option to renew or extend a lease or sub-lease, whether or not forming part of a series of options, is exercised, and
  - (b) that any option to terminate a lease or sub-lease is not exercised.
- (3) A disposal is an exempt disposal for the purposes of sections 120 to 123 above if it is—
  - (a) a disposal of the whole of the dwelling and a conveyance of the freehold or an assignment of the lease and the person or each of the persons to whom it is made is a qualifying person as defined in subsection (4) below;
  - (b) a vesting of the whole of the dwelling in a person taking under a will or on an intestacy;
  - (c) a disposal of the whole of the dwelling in pursuance of an order made under section 24 of the Matrimonial Causes Act 1973 (property adjustment orders in connection with matrimonial proceedings) or section 2 of the Inheritance (Provision for Family and Dependants) Act 1975 (orders as to financial provision to be made from estate);
  - (d) a compulsory disposal as defined in section 161 of the Housing Act 1985 (meaning of compulsory disposal);
  - (e) a disposal of property consisting of land included in the dwelling by virtue of section 184 of that Act (land let with or used for the purposes of the dwelling-house); or
  - (f) a disposal under which the interest of a person entitled to assistance by way of repurchase under Part XVI of that Act (assistance for owners of defective housing) is acquired in accordance with Schedule 20 to that Act.
- (4) A person is a qualifying person for the purposes of subsection (3)(a) above if—
  - (a) in the case of an individual, he is—
    - (i) the person, or one of the persons, by whom the disposal is made;
    - (ii) the spouse, or former spouse, of that person or one of those persons; or
    - (iii) a member of the family of that person or one of those persons; or
  - (b) in the case of a company, it is an associated company of the company by whom the disposal is made;and, for the purposes of paragraph (b) above, section 416 of the Income and Corporation Taxes Act 1988 (meaning of associated company) shall apply in determining whether a company is an associated company of another.
- (5) For the purposes of sections 120 to 123 above, the grant of an option enabling a person to call for a relevant disposal which is not an exempt disposal shall be treated as such a disposal made to him.

## **125 Repayment of grant**

- (1) Any reference in this section to a “grant condition” is a reference to a condition for the time being in force under subsection (2) or subsection (4) of section 119 above, subsection (2) of section 120 above, subsection (2) of section 121 above, any of subsections (2), (4) and (6) of section 122 above or subsection (2) of section 123 above.
- (2) If at any time while a grant condition remains in force with respect to a dwelling, house or building.—
  - (a) the owner of the dwelling, house or building to which the condition relates pays the amount of the grant to the local housing authority by whom the grant was made, or
  - (b) a mortgagee of the interest of the owner in that dwelling, house or building being a mortgagee entitled to exercise a power of sale, makes such a payment, the grant condition and any other grant conditions shall cease to be in force with respect to that dwelling, house or building.
- (3) In the case of a grant condition imposed on a landlord’s common parts application any reference in subsection (2) above to the owner of the building is a reference to the applicant or any such successor in title as is referred to in section 123(4) above.
- (4) An amount paid by a mortgagee under subsection (2)(b) above shall be treated as part of the sums secured by the mortgage and may be discharged accordingly.
- (5) The purposes authorised for the application of capital money by—
  - (a) section 73 of the Settled Land Act 1925,
  - (b) that section as applied by section 28 of the Law of Property Act 1925 in relation to trusts for sale, and
  - (c) section 26 of the Universities and College Estates Act 1925,include the making of payments under subsection (2) above.

## **126 Renovation grants relating to two or more dwellings**

- (1) Subject to subsection (2) below, no application for a renovation grant may be made in respect of more than one dwelling.
- (2) A single application may be made for a renovation grant towards the cost of works required for the provision of two or more dwellings by the conversion of a house or other building.
- (3) In the case of such a single application as is referred to in subsection (2) above—
  - (a) for the purposes of section 106 above, a separate certificate may be given in respect of each dwelling or in respect of any one or more of them;
  - (b) if the application is accompanied by more than one certificate and at least one of them is an owner-occupation certificate or a special certificate the application shall be treated as falling within section 109 above and not within section 110 above;
  - (c) each dwelling shall be treated separately for the purposes of sections 119 to 125 above; and
  - (d) the grant shall, for those purposes, be treated as apportioned equally between each of the dwellings, and any reference in those sections to the amount of the grant shall be construed accordingly.

### *Group repair schemes*

## **127 Group repair schemes and persons eligible to participate**

- (1) In accordance with a scheme under this section prepared by a local housing authority and approved by the Secretary of State, the authority may, with the consent of the persons participating in the scheme, enter into agreements to secure the carrying out of such external works to qualifying buildings to which the scheme relates as will ensure that, on completion of the works, the exterior of those buildings will be in reasonable repair; and in this Part such a scheme is referred to as a “group repair scheme”.
- (2) The approval of the Secretary of State under subsection (1) above may be given either to a specific scheme or generally to schemes which fulfil such criteria as he may from time to time specify; and any such approval may be made conditional upon compliance with requirements specified by him.
- (3) Every person who, at the date of the approval of the scheme, has an owner’s interest in a dwelling or other premises comprised in a building to which a group repair scheme relates and who fulfils the conditions in subsection (5) below is eligible to participate in the scheme as an assisted participant unless that person is—
  - (a) the council of a county, district or London borough, the Common Council of the City of London or the Council of the Isles of Scilly;
  - (b) a development corporation or the Commission for the New Towns;
  - (c) the Development Board for Rural Wales;
  - (d) a housing action trust; or
  - (e) a registered housing association, within the meaning of the Housing Associations Act 1985.
- (4) Any of the bodies specified in paragraphs (a) to (e) of subsection (3) above which has an owner’s interest in a dwelling or other premises comprised in a building to which a group repair scheme relates is eligible to participate in the scheme as an unassisted participant.
- (5) The conditions referred to in subsection (3) above are—
  - (a) that, as respects the dwelling or other premises in which he has an owner’s interest, the person concerned either is able to give possession of any part of the building to which external works are proposed to be carried out or has the consent of the occupier of that part to the carrying out of those works; and
  - (b) that, if the owner’s interest which he has is an interest in a dwelling and this paragraph is not excluded by subsection (6) below, he gives a certificate of future occupation which falls within subsection (2) or subsection (4) of section 106 above; and
  - (c) that, if the owner’s interest which the person concerned has is an interest in a house in multiple occupation and that person is not a charity or the trustee of a charity, he gives a certificate under section 106(7) above.
- (6) Paragraph (b) of subsection (5) above does not apply if—
  - (a) the person concerned is a charity or the trustee of a charity; or
  - (b) the dwelling is the residence house of an ecclesiastical benefice.
- (7) If the Secretary of State so directs in the case of any scheme or any description of scheme, such of the provisions of this section and sections 128 to 130 below as are

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specified in the direction shall not apply in relation to that scheme or, as the case may be, in relation to a scheme of that description.

- (8) Section 99 above applies to the power to give directions under subsection (7) above as it applies to a power to give directions under Part VII of this Act.

## **128 Qualifying buildings and external works, etc**

- (1) A building is not a qualifying building in relation to a group repair scheme unless, at the time the scheme is prepared, the whole or some part of the exterior of the building is not in reasonable repair and that lack of reasonable repair affects at least 75 per cent. of the houses contained in the building.
- (2) Every group repair scheme shall relate to at least one qualifying building (in this section referred to as “the primary building”) which was constructed so as to comprise not less than four separate houses and may also relate to one or more other qualifying buildings if the following conditions are fulfilled with respect to each of them—
  - (a) the building was constructed so as to comprise at least one house and is contiguous or adjacent to the primary building; and
  - (b) the exterior of the building is not in reasonable repair and is in need of works similar to those required to the exterior of the primary building; and
  - (c) carrying out the works to the building and the primary building at the same time is the most effective way of securing the repair of each of them.
- (3) The question whether a building was constructed so as to comprise not less than four houses or at least one house shall be determined according to the configuration of the building at the date of its construction.
- (4) For the purposes of this section—
  - (a) a terrace of houses shall be regarded as one building except that, if it appears appropriate to a local housing authority to do so, having regard in particular to the requirements of subsection (1) above, they may treat part only of the terrace as a building; and
  - (b) if, apart from this paragraph, one building would be regarded as containing two or more purpose-built flats and one or more houses, the part of the building containing the purpose-built flats and the part or parts of the building containing the houses shall be regarded as separate buildings.
- (5) In relation to a group repair scheme, “external works” are works to any part of the exterior of a building to which the scheme relates and, so far only as may be necessary to give satisfactory effect to such works, additional works to other parts of the building.
- (6) For the purposes of this Part, the exterior of a building means—
  - (a) any part thereof which is exposed to the elements of wind and rain or otherwise faces into the open air (including, in particular, roofs, chimneys, walls, doors, windows, rainwater goods and external pipework); and
  - (b) the curtilage of the building, including any wall within the curtilage which is constructed as a retaining wall or otherwise to protect the structure of the building;and, in relation to works to any part of the curtilage referred to in paragraph (b) above, the reference in subsection (5) above to additional works to other parts of the building includes a reference to additional works on land outside the curtilage.
- (7) In this section—

- (a) “house” means a dwelling which is not a flat (and, accordingly, does not include a house constructed as a house in multiple occupation); and
  - (b) a “purpose-built flat” means a part of a building which, at the date of the construction of the building, was constructed as a flat.
- (8) For the purposes of this Part, unless the exterior of a building is substantially free from rising or penetrating damp, it shall not be regarded as in reasonable repair.

## **129 Contributions by participants and limitations on works**

- (1) Those persons who are eligible to participate in a group repair scheme and who participate in the scheme by signifying consent (in this section referred to as “scheme consent”), in accordance with the terms of the scheme, to the proposals to carry out the external works specified in the scheme shall be liable, subject to subsection (2) below, to contribute to the cost, as notified to them under the scheme, of such of those works as relate to the house or other premises in which they have an interest at a rate determined in accordance with this section.
- (2) For the purposes of subsection (1) above, “house” includes premises which were originally constructed as a house but which, by the time the group repair scheme is prepared, have been divided so as to form one or more flats, with or without other premises; and, in the case of a house which has been so divided, the cost of such of the external works as relate to the house shall be apportioned between the several parts into which the house has been divided in such way as may be agreed between the persons with owner’s interests in those parts or, in default of agreement, equally.
- (3) In the case of a person who participates in a scheme as an unassisted participant, the rate of contribution shall be 100 per cent.
- (4) In the case of a person who participates in a scheme as an assisted participant but whose owner’s interest in the part of the qualifying building in question is an interest in premises other than a house or flat, the rate of contribution, subject to subsection (5) below, shall be—
  - (a) 25 per cent. in a case where the qualifying building is in a renewal area; and
  - (b) 50 per cent. in any other case;and in this subsection “house” includes a house in multiple occupation.
- (5) The Secretary of State may by order amend paragraph (a) or paragraph (b) of subsection (4) above so as to specify a percentage different from that which applied before the coming into force of the order.
- (6) In the case of any other person who participates in a scheme as an assisted participant, the rate of contribution shall be such percentage as may be determined by the local housing authority, being a percentage between nil and that which would be appropriate if subsection (4) above applied; and, in making their determination under this subsection in the case of any person, the authority shall have regard—
  - (a) to the way in which section 109 or section 110 above would apply in his case if he were an applicant for a renovation grant or, as the case may require, an HMO grant; and
  - (b) to any guidance given by the Secretary of State for the purposes of this section;and section 99 above applies to the power to give guidance as mentioned in paragraph (b) above as it applies to any power to give guidance under Part VII of this Act.

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- (7) Except as provided by subsection (8) below, no external works shall be carried out to a part of a building which consists of a house, flat or other premises in respect of which no person eligible to participate has signified scheme consent.
- (8) Subsection (7) above does not apply—
- (a) to works carried out to a part of a building in respect of which there is no person (or no ascertainable person) eligible to participate in the scheme; or
  - (b) to works which—
    - (i) are carried out to a part of a building in respect of which the person eligible to participate consents to their being carried out but has not signified scheme consent (and, accordingly, is not liable to contribute); and
    - (ii) it is necessary to carry out in order satisfactorily to carry out any external works specified in the scheme to another part of the building in respect of which a person eligible to participate has signified scheme consent.

### **130 Payment of balance of costs in case of certain disposals**

- (1) When the external works specified in a group repair scheme are completed, the local housing authority shall, for the purposes of this section, send to each assisted participant a certificate specifying the date on which the works were completed to their satisfaction; and in subsection (2) below that date is referred to as “the completion date”.
- (2) It shall be a condition of participation in a group repair scheme as an assisted participant that if, before the expiry of the period of three years beginning with the completion date, the assisted participant makes a relevant disposal (other than an exempt disposal) of the dwelling or other premises in which he had an owner’s interest at the date of the approval of the scheme, then, subject to subsection (6) below, he shall pay to the local housing authority on demand the outstanding balance determined in accordance with subsections (3) and (4) below or such lesser amount, being not less than one-third of that outstanding balance, as the authority may specify in the demand.
- (3) Subject to subsection (4) below, in the case of any assisted participant, the outstanding balance referred to in subsection (2) above is the difference between—
- (a) the cost, as notified to him under the scheme, of such of the external works specified in the scheme as relate to the house or other premises in which his owner’s interest subsisted; and
  - (b) the amount of the contribution in respect of that cost paid by him by virtue of section 129 above.
- (4) If, in the case of any assisted participant, the cost of the external works relating to the house in which he had an owner’s interest falls to be apportioned as mentioned in subsection (2) of section 129 above, the reference in subsection (3) above to the cost of the works relating to the house shall be construed as a reference to that part of the cost which is apportioned to the part of the house in which his owner’s interest subsisted.
- (5) Section 124 above applies for the purposes of this section as it applies for the purposes of sections 120 to 123 above, except that for any reference in that section to the dwelling there shall be substituted a reference to the house (or part of a house) or other premises in which the assisted participant had an owner’s interest.



- (6) The duty of an assisted participant under subsection (2) above shall cease to apply if he makes such a disposal as is mentioned in that subsection either for no consideration or for consideration of an amount less than that either prescribed, or calculated in accordance with a formula prescribed, by regulations made by the Secretary of State.
- (7) In subsections (3) to (5) above “house” shall be construed in accordance with section 129(2) above.

### *Minor works*

## **131 Assistance for provision of minor works to dwellings**

- (1) Subject to the provisions of regulations under subsection (3) below, on an application made to them for the purpose, a local housing authority may give assistance as mentioned in subsection (2) below—
  - (a) for the provision or improvement of thermal insulation in a dwelling;
  - (b) for the carrying out of works of repair to a dwelling which, at the time of the application, is included in a clearance area, within the meaning of section 289 of the Housing(c) to an elderly owner or tenant of a dwelling for the carrying out of works of repair, improvement or adaptation;
  - (d) for the carrying out of works to adapt a dwelling to enable an elderly person who is not an owner or tenant of the dwelling but who is or proposes to be resident in the dwelling to be cared for; or
  - (e) for any other purpose specified by order made by the Secretary of State.
- (2) Assistance under this section may be in the form of a grant or the provision of materials but—
  - (a) the total amount or value of the assistance given on any one application shall not exceed £1,000 or such other sum as may be determined for the purposes of this paragraph in accordance with regulations under subsection (3) below;
  - (b) the total amount or value of assistance given under this section in any period of three years in respect of any one dwelling shall not exceed £3,000 or such other sum as may be determined for the purposes of this paragraph in accordance with regulations under subsection (3) below; and
  - (c) no assistance may be given under this section in respect of works if they are or are included in the eligible works in relation to an application for a grant which has been approved under the preceding provisions of this Part.
- (3) The Secretary of State may by regulations make provision for the determination of sums for the purposes of paragraphs (a) and (b) of subsection (2) above and, in addition, may for the purposes of this section specify—
  - (a) the manner in which an application for assistance is to be made and the content of such an application;
  - (b) the descriptions of dwellings and works in respect of which assistance may be given;
  - (c) the descriptions of persons to whom assistance may be given;
  - (d) the procedure for dealing with applications under subsection (1) above and for ensuring that works are carried out to any standard specified in the regulations; and

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- (e) the way in which the amount of assistance to be given on any application is to be calculated, taking account, in such manner and to such extent as may be determined under the regulations, of the financial circumstances of the applicant.

### *Supplementary provisions*

## **132 Contributions by the Secretary of State**

- (1) The Secretary of State may pay contributions to local housing authorities towards such expenditure incurred by them under this Part as he may determine.
- (2) The rate or rates of the contributions, the calculation of the expenditure to which they relate and the manner of their payment shall be such as may be determined by the Secretary of State with the consent of the Treasury.
- (3) A determination under subsection (1) or subsection (2) above may be made—
  - (a) generally, or
  - (b) with respect to a particular local housing authority or description of authority, including a description framed by reference to authorities in a particular area, and may make different provision in relation to different cases or descriptions of case.
- (4) Subsections (3) to (6) of section 96 above shall apply in relation to this section, substituting a reference to subsection (1) or, as the case may be, subsection (2) above for any reference to the corresponding subsection of that section.
- (5) In the application of section 516 of the Housing Act 1985 (contributions by Secretary of State towards expense of grants under Part XV of that Act) in relation to a case where—
  - (a) an application under section 461 of that Act has been approved by the local housing authority after 14th June 1989, and
  - (b) the date which is the certified date, as defined in section 499(3) of that Act, in relation to the works to which that application relates falls on or after the day appointed under section 195 below for the coming into force of section 101 above,

for subsection (2) there shall be substituted the following subsection—

- “(2) In the case of any grant, the contribution—
  - (a) shall be equal to a percentage of the amount of the grant determined under subsections (3) and (4) below; and
  - (b) shall be payable in one sum or by two or more instalments, according as the Secretary of State may determine.”

## **133 Persons entitled to grants**

- (1) In relation to a grant or an application for a grant, references in the preceding provisions of this Part, and in subsection (2) below, to the applicant shall be construed in relation to any time after his death as a reference to his personal representatives.
- (2) Where an application for a grant is approved but before the certified date the applicant ceases to be a person entitled to apply for a grant of that description—

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- (a) in the case of any grant, other than a common parts grant, no grant shall be paid or, as the case may be, no further instalments shall be paid, and
- (b) in the case of a common parts grant, other than one made on a tenants' common parts application, the local housing authority may refuse to pay the grant or any further instalment,

and the authority may demand that any instalment of the grant which has been paid be repaid forthwith, together with interest from the date on which it was paid until repayment at such reasonable rate as the authority may determine.

- (3) For the purposes of subsection (2) above an applicant ceases to be a person entitled to apply for a grant, other than a common parts grant,—
  - (a) if he ceases to have the owner's interest by virtue of which the condition in section 104(1)(a) above was (or was treated as) fulfilled, or
  - (b) if he ceases to be a tenant of the dwelling, or
  - (c) if he, or a member of his family, ceases to have the intention specified in a certificate under subsection (2), subsection (3) or subsection (4) (as the case may be) of section 106 above, or
  - (d) if, in the case of an applicant for an HMO grant, he ceases to have the intention specified in a certificate under section 106(7) above.
- (4) For the purposes of subsection (2) above an applicant whose application is a landlord's common parts application ceases to be a person entitled to apply for a common parts grant—
  - (a) if he ceases to have a duty or power to carry out the relevant works; or
  - (b) if he ceases to have such an interest in the building as is referred to in paragraph (a) or paragraph (b) of section 105(4) above.

### **134 Cases in which grants may be re-calculated, withheld or repaid**

- (1) Where an application for a grant has been approved by the local housing authority, subsection (2) below applies in any case where—
  - (a) the eligible works are not completed to the satisfaction of the authority within the period specified under subsection (2) of section 118 above, or such extended period as they may allow under subsection (3) of that section; or
  - (b) the authority ascertain that the aggregate of the cost of completing the eligible works and the costs incurred with respect to preliminary or ancillary services and charges, is or is likely to be lower than the estimated expense; or
  - (c) the authority ascertain that without their knowledge the eligible works were started before the application was approved and the application was neither—
    - (i) one which they were required to approve by virtue of section 112 above in a case where completion of the relevant works was necessary to comply with a notice under section 189 of the Housing Act 1985 (repair notice requiring works to render premises fit for human habitation); nor
    - (ii) one which they were required to approve by virtue of section 113 above.
- (2) Where this subsection applies, the authority may—
  - (a) refuse to pay the grant or any further instalment of grant which remains to be paid; or

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- (b) make a reduction in the grant which, in a case falling within subsection (1) (b) above, is to be a reduction proportionate to the reduction in the estimated expense;

and may demand repayment by the applicant forthwith, in whole or part, of the grant or any instalment of the grant paid, together with interest at such reasonable rate as the authority may determine from the date of payment until repayment.

### **135 Power of local housing authority to carry out works which would attract grant**

- (1) A local housing authority may by agreement with a person having the requisite interest execute at his expense—
  - (a) any works towards the cost of which a grant under this Part is payable or might be paid on an application duly made and approved; and
  - (b) any further works which it is in their opinion necessary or desirable to execute together with the works mentioned in paragraph (a) above.
- (2) Except in the case of a common parts grant, the “requisite interest” means an owner’s interest in every parcel of land on which the works are to be carried out or, in a case where (if an application was made) section 104(4) above might apply, in part only of the land concerned.
- (3) In the case of a common parts grant, the reference in subsection (1) above to a person having the requisite interest is a reference to the person who—
  - (a) has a power or duty to carry out the relevant works; and
  - (b) has such an interest in the building or in a flat in the building as is referred to in subsection (4) of section 105 above.

### **136 Parsonages, charities etc**

Sections 104 and 106 above do not apply to—

- (a) an application for a grant in respect of glebe land or the residence house of an ecclesiastical benefice; and
- (b) an application for a grant made by a charity or on behalf of a charity by the charity trustees of the charity.

### **137 Orders and regulations**

- (1) Orders under this Part—
  - (a) may make different provision with respect to different cases or descriptions of cases, including different provision for different areas; and
  - (b) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (2) Orders and regulations under this Part may contain such incidental, supplemental or transitional provisions as the Secretary of State considers appropriate.

### **138 Interpretation of Part VIII**

- (1) In this Part, except where the context otherwise requires,—
  - “agricultural population” means—

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(a) persons whose employment or latest employment is or was employment in agriculture or in an industry mainly dependent on agriculture, and

(b) the dependents of those persons;

and for this purpose “agriculture” includes dairy-farming and poultry-farming and the use of land as grazing, meadow or pasture land, or orchard or osier land or woodland, or for market gardens or nursery grounds;

“certified date” means the date certified by the local housing authority as the date on which the execution of the eligible works is completed to their satisfaction;

“charity” does not include a registered housing association but, subject to that, has the same meaning as in the Charities Act 1960;

“common parts”, in relation to a building, includes the structure and exterior of the building and common facilities provided, whether in the building or elsewhere, for persons who include the occupiers of one or more flats in the building;

“disabled person” has the meaning assigned by section 114(6) above;

“dwelling” means a building or part of a building occupied or intended to be occupied as a separate dwelling, together with any yard, garden, outhouses and appurtenances belonging to it or usually enjoyed with it;

“the eligible works” shall be construed in accordance with section 116(2) (a) above;

“the estimated expense” shall be construed in accordance with section 116(2) above;

“flat”, in relation to a building, means a dwelling which is a separate set of premises, whether or not on the same floor, divided horizontally from some other part of the building;

“group repair scheme” has the meaning assigned by section 127(1) above;

“house in multiple occupation” has the same meaning as in Part VII above;

“improvement” includes alteration and enlargement;

“initial period” means the period of five years beginning with the certified date;

“landlord’s common parts application” has the meaning assigned by section 105(2)(b) above;

“local housing authority” has the same meaning as in the Housing Act 1985;

“long tenancy” has the meaning assigned by section 115 of that Act;

“occupying tenant” has the meaning assigned by section 105(2)(a) above;

“owner”, in relation to a dwelling, means the person who—

(a) is for the time being entitled to receive from a lessee of the dwelling (or would be so entitled if the dwelling were let) a rent of not less than two-thirds of the net annual value of the dwelling; and

(b) is not himself liable as lessee of the dwelling, or of property which includes the dwelling, to pay such a rent to a superior landlord;

and, in relation to a house in multiple occupation, “owner” has the same meaning as in Part XI of the Housing Act 1985;

“owner’s interest” has the meaning assigned by section 104(2) above;

“participating landlord” has the meaning assigned by section 105(3) above;

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“preliminary or ancillary services and charges” has the meaning assigned by section 102(3) above;

“prescribed” means prescribed by regulations made by the Secretary of State;

“the relevant works” has the meaning assigned by section 102(2)(a) above;

“tenancy” includes a sub-tenancy and an agreement for a tenancy or sub-tenancy;

“tenant” includes a sub-tenant and any person deriving title under the original tenant or sub-tenant;

“tenants' common parts application” has the meaning assigned by section 105(2)(c) above.

- (2) Section 113 of the Housing Act 1985 (meaning of “members of a person’s family”) shall apply in determining whether a person is a member of another’s family for the purposes of this Part.

## PART IX

### MISCELLANEOUS AND GENERAL

*Local Government Finance Act 1988, local finance (Scotland) and block grants*

#### **139 Local Government Finance Act 1988: amendments**

Schedule 5 to this Act (which amends the Local Government Finance Act 1988) shall have effect.

#### **140 Scottish non-domestic rates: interim provisions**

- (1) For section 3 of the Abolition of Domestic Rates Etc. (Scotland) Act 1987 (determination of non-domestic rates) there shall be substituted the following section—

##### **“3A Non-domestic rates: interim provisions**

- (1) The Secretary of State shall, in respect of each of the financial years specified in subsection (2) below, prescribe for each local authority a rate which shall be their non-domestic rate in respect of that year.
- (2) The financial years referred to in subsection (1) above are those beginning with the financial year 1990-91 and ending with that immediately before the financial year in respect of which the non-domestic rate is first prescribed under section 3B of this Act.
- (3) Non-domestic rates shall be levied in accordance with section 7 of the Local Government (Scotland) Act 1975 by each rating authority in respect of lands and heritages—
  - (a) which are subjects (other than part residential subjects) in respect of which there is an entry in the valuation roll, according to their rateable value or, where a rateable value has been prescribed or determined

- in respect of the lands and heritages under section 128 of the Local Government Finance Act 1988, according to that rateable value; or
- (b) which are part residential subjects, according to that part of their rateable value which is shown in the apportionment note as relating to the non-residential use of those subjects or, where a rateable value has been prescribed or determined in respect of the lands and heritages under section 128 of the Local Government Finance Act 1988, according to that part of that rateable value which is so shown in the apportionment note.
- (4) The rates prescribed under subsection (1) above shall be known—
- (a) in the case of the regional council, as the non-domestic regional rate;
- (b) in the case of the district council, as the non-domestic district rate; and
- (c) in the case of the islands council, as the non-domestic islands rate.”
- (2) Accordingly—
- (a) references (however expressed) in any enactment to the non-domestic rate determined by a local authority under section 3 of the Abolition of Domestic Rates Etc. (Scotland) Act 1987 shall be construed as references to the non-domestic rate prescribed for the local authority under section 3A of that Act;
- (b) in section 109(2) of the Local Government (Scotland) Act 1973 for the words from “non-domestic district rate” onward there shall be substituted the words “information as may reasonably be required for the preparation of demand notes for the purposes of levying the non-domestic district rate”;
- (c) section 110A(2) of the Local Government (Scotland) Act 1973 and section 128(2) of and paragraph 16 of Schedule 12 to the Local Government Finance Act 1988 shall cease to have effect.

## **141 Scottish non-domestic rate**

- (1) For section 3A of the Abolition of Domestic Rates Etc. (Scotland) Act 1987 there shall be substituted the following section—

### **“3B Unified non-domestic rate**

- (1) The Secretary of State shall, in respect of each of the financial years specified in subsection (2) below, prescribe a rate which shall be the non-domestic rate to be levied throughout Scotland in respect of that financial year.
- (2) The financial years referred to in subsection (1) above are those beginning with the first financial year after the coming into force of section 141 of the Local Government and Housing Act 1989.
- (3) Subject to subsection (4) below, the non-domestic rate shall be levied in accordance with section 7 of the Local Government (Scotland) Act 1975 by each rating authority in respect of lands and heritages in their area being lands and heritages—
- (a) which are subjects (other than part residential subjects) in respect of which there is an entry in the valuation roll, according to their rateable value or, where a rateable value has been prescribed or determined in respect of the lands and heritages under section 128 of the Local Government Finance Act 1988, according to that rateable value; or

- (b) which are part residential subjects, according to that part of their rateable value which is shown in the apportionment note as relating to the non-residential use of those subjects or, where a rateable value has been prescribed or determined in respect of the lands and heritages under section 128 of the Local Government Finance Act 1988, according to that part of that rateable value which is so shown in the apportionment note.
- (4) In the application of section 7 of the Local Government (Scotland) Act 1975 to the levying of the non-domestic rate prescribed under this section, for the words “to which the rate relates” in each of subsections (1) and (2) of that section there shall be substituted the words “of the rating authority”.
- (2) Accordingly—
  - (a) references (however expressed) in any enactment to the non-domestic rate determined by or prescribed in relation to a local authority under section 3 of the Abolition of Domestic Rates Etc. (Scotland) Act 1987 shall be construed as references to the non-domestic rate prescribed under section 3B of that Act;
  - (b) in section 109 of the Local Government (Scotland) Act 1973 (rating authorities)—
    - (i) for paragraphs (a) and (b) of subsection (1) there shall be substituted the following paragraph—
      - “(L) in the case of the non-domestic rate prescribed under section 3B of the Abolition of Domestic Rates Etc. (Scotland) Act 1987, the regional council and the islands council;”;
    - (ii) in subsection (2) for the words from “non-domestic district rate” onward there shall be substituted the words “information as may reasonably be required for the preparation of demand notes for the purposes of levying the non-domestic rate”.
- (3) For section 110 of the Local Government (Scotland) Act 1973 (payments by regional councils to district councils in respect of district rates) there shall be substituted the following section—

**“110 Division between regional and district councils of amount collected by way of non-domestic rate**

The Secretary of State may by regulations provide as to the division among the regional council and the councils of the districts within the area of the regional council of the amount collected by way of the non-domestic rate in that area in respect of a financial year.”

- (4) Section 111(1)(a), (b) and (d) of the Local Government (Scotland) Act 1973 (power to make regulations as to certain matters connected with non-domestic rates) shall cease to have effect.

**142 Powers to vary incidence of standard community charge: Scotland**

In section 10 of the Abolition of Domestic Rates Etc. (Scotland) Act 1987 (liability for and calculation of standard community charge) for subsections (6) and (7) there shall be substituted the following subsections—



- “(6) The standard community charge due to a local authority in respect of any premises in respect of any financial year shall be the product of the personal community charge determined in respect of that year by the local authority and—
- (a) where the premises are in a specified class, the standard community charge multiplier determined in respect of that class by the authority; or
  - (b) where the premises are not in a specified class, the standard community charge multiplier determined by the authority in relation to such premises,
- in respect of that year.
- (7) A specified class is one which has been prescribed under this subsection or determined under regulations made under subsection (7F) below.
- (7A) A local authority shall determine their standard community charge multiplier or multipliers before such date in each year as is prescribed.
- (7B) A standard community charge multiplier must be one of the following, 0,  $\frac{1}{2}$ , 1,  $1\frac{1}{2}$ , 2.
- (7C) A local authority may resolve that different standard community charge multipliers shall apply in relation to different classes of premises prescribed under subsection (7) above.
- (7D) A standard community charge multiplier relating to a class of premises prescribed under subsection (7) above shall not exceed such maximum multiplier as may be prescribed in relation to that class.
- (7E) In prescribing classes under subsection (7) above, the Secretary of State may classify premises by reference to such factors as he thinks fit, including, without prejudice to that generality—
- (a) the physical characteristics of premises or any part of them;
  - (b) the fact that premises are, or any part of them is, unoccupied;
  - (c) the fact that premises are, or any part of them is, occupied for prescribed purposes;
  - (d) the fact that premises are, or any part of them is, occupied by persons of prescribed descriptions;
  - (e) the circumstances of persons liable to pay the standard community charge.
- (7F) The Secretary of State may, by regulations, make provision—
- (a) enabling local authorities or local authorities of such class or classes as he may specify in the regulations—
    - (i) to determine, in relation to their areas, classes of premises additional to those prescribed under subsection (7) above;
    - (ii) to determine different such classes of premises in relation to different parts of their areas; and
    - (iii) to resolve that different standard community charge multipliers shall apply in relation to different classes of premises determined under the regulations, and

- (b) requiring them, when determining a class or classes under the regulations, to classify premises only by reference to one or more prescribed factors being such factors as the Secretary of State thinks fit.
- (7G) Regulations under subsection (7F) above may make provision enabling the district council to resolve that different standard community charge multipliers shall apply in relation to such different classes of premises as have, in relation to the district, been determined under the regulations by the council of the region in which the district is situated.
- (7H) A regional council may resolve that different standard community charge multipliers shall apply in relation to the same specified class of premises in different districts within the region.”

### **143 Reduced liability for personal community charges: Scotland**

—The following section shall be inserted after section 9 of the Abolition of Domestic Rates Etc. (Scotland) Act 1987—

#### **“9A Reduced liability for personal community charge**

- (1) The Secretary of State may make regulations as regards any case where—
  - (a) a person is or was liable to pay, in respect of any time in such financial year as is prescribed, the personal community charge determined by a local authority in respect of that year; and
  - (b) prescribed conditions are fulfilled.
- (2) Regulations under this section may provide that the amount of a person’s liability in respect of personal community charge shall not be such amount as it would be apart from the regulations or, as the case may be, such amount as it was, but instead such smaller amount as is arrived at in accordance with prescribed rules.
- (3) The conditions mentioned in subsection (1) above may be prescribed by reference to such factors as the Secretary of State sees fit; and in particular such factors may include all or any of the following—
  - (a) rates for a period before 1 April 1989;
  - (b) the circumstances of or other matters relating to the person concerned;
  - (c) an amount relating to the local authority concerned and specified, or to be specified, for the purposes of the regulations in a report laid, or to be laid, before the House of Commons;
  - (d) such other amounts as may be prescribed or arrived at in a prescribed manner;
  - (e) the making of an application by the person concerned.
- (4) The rules mentioned in subsection (2) above may be prescribed by reference to such factors as the Secretary of State sees fit; and in particular such factors may include all or any of the factors mentioned in subsection (3)(a) to (d) above.
- (5) Without prejudice to the generality of section 31(2) of this Act, regulations under this section may include—

- (a) provision requiring the Secretary of State to specify in a report, for the purposes of the regulations, an amount in relation to each local authority;
  - (b) provision requiring him to lay the report before the House of Commons;
  - (c) provision for the review of any prescribed decision of a local authority relating to the application or operation of the regulations.
- (6) To the extent that he would not have power to do so apart from this subsection, the Secretary of State may—
  - (a) include in regulations under this section such amendments of any social security instrument as he thinks expedient in consequence of the regulations under this section;
  - (b) include in any social security instrument such provision as he thinks expedient in consequence of regulations under this section.and any such amendments or provision may be deemed by the regulations or, as the case may be, instrument to have come into effect prior to the date of coming into force of the regulations or instrument.
- (7) In subsection (6) above “social security instrument” means an order or regulations made, or falling to be made, by the Secretary of State under the Social Security Act 1986.”

#### **144 Community charge grants: Scotland**

The following section shall be inserted after section 23 of the Abolition of Domestic Rates Etc. (Scotland) Act 1987—

### **“PART IIIA**

### **COMMUNITY CHARGE GRANTS**

#### **23A Community charge grants**

- (1) If regulations under section 9A have effect in respect of a financial year, the Secretary of State may, with the consent of the Treasury, pay a grant to a local authority in respect of that year.
- (2) The amount of the grant shall be such as the Secretary of State may, with the consent of the Treasury, determine.
- (3) A grant under this section shall be paid at such time, or in instalments of such amounts and at such times, as the Secretary of State may, with the consent of the Treasury, determine.
- (4) In making any payment of grant under this section the Secretary of State may impose such conditions as he may, with the consent of the Treasury, determine; and the conditions may relate to the repayment in specified circumstances of all or part of the amount paid, or otherwise.

(5) In deciding whether to pay a grant under this section, and in determining the amount of any such grant, the Secretary of State shall have regard to his estimate of the aggregate of—

- (c) any amount which, in consequence of the regulations, the local authority might reasonably be expected to lose, or to have lost, by way of payments in respect of community charges in respect of the financial year concerned; and
- (d) any administrative expenses the local authority might reasonably be expected to incur, or to have incurred, in respect of the financial year in giving effect to the regulations.”

**145 Amendment of Abolition of Domestic Rates Etc. (Scotland) Act 1987 and other enactments: Scotland**

Schedule 6 to this Act (which amends the Abolition of Domestic Rates Etc. (Scotland) Act 1987 and other enactments) shall have effect.

**146 Special grants**

- (1) The Secretary of State may, with the consent of the Treasury, pay a grant (in this section referred to as a “special grant”) in accordance with this section to a charging authority.
- (2) Before making any one or more special grants, the Secretary of State shall make a determination stating, with respect to the special grant or, as the case may be, each of the special grants,—
  - (a) to which authority it is to be paid,
  - (b) the purpose for which it is to be paid, and
  - (c) the amount of the grant,
 and that determination shall be made with the consent of the Treasury and shall be specified in a report (to be called a special grant report) which shall contain such explanation as the Secretary of State considers desirable of the main features of the determination.
- (3) A special grant report shall be laid before the House of Commons and, as soon as is reasonably practicable after the report has been so laid, the Secretary of State shall send a copy of it to any charging authority to whom a special grant is proposed to be paid in accordance with the determination in the report.
- (4) No special grant shall be paid unless the special grant report containing the determination relating to the grant has been approved by a resolution of the House of Commons.
- (5) A special grant report may specify conditions which the Secretary of State, with the consent of the Treasury, intends to impose on the payment of (or of any instalment of) any special grant to which the report relates; and the conditions may require the provision of returns or other information before a payment is made to the local authority concerned or relate to the use of the amount paid, or to the repayment in specified circumstances of all or part of the amount paid, or otherwise.
- (6) Without prejudice to compliance with any conditions imposed as mentioned in subsection (5) above, a special grant shall be paid at such time or in instalments of

such amounts and at such times as the Secretary of State may, with the consent of the Treasury, determine.

- (7) For the purposes of this section each of the following is a charging authority—
- (a) a district council;
  - (b) a London borough council;
  - (c) the Common Council of the City of London; and
  - (d) the Council of the Isles of Scilly.

#### **147 Adjustment of block grant**

- (1) This section applies for any year in relation to which, immediately before the passing of this Act, the obligation imposed on the Secretary of State by the paragraph 5 pooling provisions to ascertain the actual amount of the increases and decreases of block grant to be made for the year in accordance with those provisions had not yet arisen.
- (2) As soon as is reasonably practicable after the passing of this Act the Secretary of State shall ascertain, for a year for which this section applies, the amount of the increases and decreases of block grant which ought to be made in accordance with the paragraph 5 pooling provisions.
- (3) Subsection (4), subsection (5) or subsection (6) below (as the case may be) applies where, for the purpose of so ascertaining, the Secretary of State needs to find the amount of a local authority's expenditure in relation to the year or the amount of any part of that expenditure.
- (4) Where the year begins in 1987 or before, he shall find the amount concerned by reference to—
- (a) figures which relate to the authority's actual expenditure incurred for the year and which were received by him before the relevant date, or
  - (b) if no such figures were received by him before that date, any other information in his possession on that date about the expenditure incurred by the authority for the year.
- (5) Where the year begins in 1988, he shall find the amount concerned by reference to any information in his possession on the relevant date about the expenditure incurred and likely to be incurred by the authority for the year.
- (6) Where the year begins in 1989, he shall find the amount concerned by reference to any information in his possession on the relevant date about the expenditure likely to be incurred by the authority for the year.
- (7) Where the year begins in 1988, and the amount concerned is the amount of the authority's relevant education expenditure for the year, he shall find the amount by reference to—
- (a) audited accounts which relate to that expenditure, which are in such form as the Secretary of State may specify and which were received by him before the second relevant date; or
  - (b) if no such accounts were received by him before the second relevant date, any information in his possession on the relevant date about that expenditure;
- and subsection (5) above shall have effect subject to the preceding provisions of this subsection.

- (8) In making payments of block grant after the passing of this Act, the Secretary of State shall adjust amounts paid so as to take account, so far as practicable, of increases and decreases ascertained under subsection (2) above.
- (9) As regards anything done after the passing of this Act for a year for which this section applies, the paragraph 5 pooling provisions shall have effect—
- (a) with the omission of paragraph 5(2) of Schedule 10 to the 1980 Act, and
  - (b) with such other modifications as result from this section.
- (10) In this section—
- “local authority”, in relation to any year, means any body which for that year is a local authority for the purposes of Part VI of the 1980 Act;
- “the 1980 Act” means the Local Government, Planning and Land Act 1980;
- “the paragraph 5 pooling provisions” means paragraph 5 of Schedule 10 to the 1980 Act and regulations made under that paragraph (adjustment of block grant);
- “the relevant date” means 1st February 1989 and “the second relevant date” means 1st October 1989;
- “year” means a period of twelve months beginning with 1st April.
- (11) For the purposes of this section an authority’s relevant education expenditure for the year beginning in 1988 is its expenditure which—
- (a) was incurred in the year, and
  - (b) was incurred by way of payments falling within regulation 3(3)(d) or (e) of the Block Grant (Education Adjustments) (England) Regulations 1987.

#### 148 Rate support grant, 1985/86

The Rate Support Grant Supplementary Report (England) (No. 4) 1985/86 (which was approved by a resolution of the House of Commons on 19th January 1989) shall have effect, and be deemed always to have had effect, as if, in Annex VI (principles for calculating grant-related poundages), for the formula set out in paragraph 4 (grant-related poundages for total expenditure at or above the threshold level) there were substituted—

$$\text{GRP} = \text{GRP at GRE} + 0.69\text{p} \times \text{threshold amount}$$

$$+ 0.8625\text{p} \times \left( \frac{\text{total expenditure} - \text{GRE}}{\text{population}} - \text{threshold amount} \right)$$

#### 149 Statutory references to rating

- (1) In the case of a provision which is made by or under any enactment and refers to a rate or a rateable value or any other factor connected with rating, the Secretary of State may make regulations—
- (a) providing that the reference shall instead be to some other factor (whether or not connected with rating); or
  - (b) providing for the factor to be amended (whether by limiting its operation or in any other way);

and this section shall have effect in place of section 119 of the Local Government Finance Act 1988.

- (2) Regulations under this section—
- (a) may make provision in such manner as the Secretary of State thinks fit (whether by amending provisions or otherwise);
  - (b) may provide for a factor expressed by reference to valuation, rent, a premium, the length of a lease, anything connected with rating, or any other matter whatever;
  - (c) may provide for a factor expressed by reference to a combination of matters (whether expressed in terms of a formula or otherwise);
  - (d) may provide for a factor which includes a method of adjustment (whether by reference to indexation or otherwise);
  - (e) may make provision with respect to the resolution of disputes (whether by a court or otherwise); and
  - (f) may contain such supplementary, incidental, consequential or transitional provisions as appear to the Secretary of State to be necessary or expedient.
- (3) A factor expressed by reference to rent may be by reference to ground rent, rent of premises at a market rate, rent as limited by law, or otherwise.
- (4) Nothing in this section shall be construed as limiting the power conferred by section 14 of the Interpretation Act 1978 to revoke, amend or vary regulations previously made under this section.
- (5) In this section “enactment” means an enactment contained in Schedule 10 to this Act, or in any other Act whether passed before or in the same Session as this Act; and for this purpose “Act” includes a private or local Act.
- (6) Without prejudice to the generality of the powers conferred by this section, section 37 of the Landlord and Tenant Act 1954 (which provides for compensation by reference to rateable values) shall be amended in accordance with Schedule 7 to this Act.

### *Charges by certain authorities*

## **150 Power to allow charges**

- (1) The Secretary of State may make regulations providing that a charge may be imposed in respect of anything—
- (a) which is done by any relevant authority or by any relevant authority of a prescribed description,
  - (b) which is prescribed or falls within a prescribed description,
  - (c) in respect of which there is no power or duty to impose a charge apart from the regulations, and
  - (d) which is not done in the course of exercising an excepted function.
- (2) The regulations may include such provision as the Secretary of State sees fit as regards charges for which the regulations provide; and nothing in subsections (3) to (5) below or section 190(1) below is to prejudice this.
- (3) The regulations—

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- (a) may be made as regards services rendered, documents issued, or any other thing done by an authority (whether in pursuance of a power or a duty);
  - (b) may provide that the amount of a charge (if imposed) is to be at the authority's discretion or to be at its discretion subject to a maximum.
- (4) Where the regulations provide that a charge may not exceed a maximum amount they may—
  - (a) provide for one amount, or a scale of amounts to cover different prescribed cases;
  - (b) prescribe, as regards any amount, a sum or a method of calculating the amount.
- (5) The regulations may include such supplementary, incidental, consequential or transitional provisions as appear to the Secretary of State to be necessary or expedient.
- (6) No regulations may be made under this section unless a draft of them has been laid before and approved by a resolution of each House of Parliament.

## **151 Power to amend provisions about charges**

- (1) Subject to subsection (4) below, this section applies in the case of an existing provision to the extent that the provision allows (as opposed to requires) a charge to be imposed in respect of anything which is done by relevant authorities (or any of them) and which is not done in the course of exercising an excepted function.
- (2) The Secretary of State may make regulations—
  - (a) repealing the provision concerned to the extent that it so provides,
  - (b) amending the provision to that extent, or
  - (c) repealing the provision to that extent and replacing it with new provisions;
 and subsection (6) of section 150 above applies in relation to regulations under this section as it applies in relation to regulations under that section.
- (3) For the purposes of subsection (1) above—
  - (a) the charge may be expressed in terms of making a charge, paying a fee, or otherwise;
  - (b) the charge may relate to services rendered, documents issued, or any other thing done by a relevant authority (whether in pursuance of a power or a duty).
- (4) A charge does not fall within subsection (1) above if—
  - (a) it is one whose proceeds fall (or part of whose proceeds falls) to be paid into the Consolidated Fund;
  - (b) it is a charge amounting to local taxation; or
  - (c) it is one as respects which provision is made by section 49 of the Water (Scotland) Act 1980 (charges in respect of water supplied by meter).
- (5) Regulations under subsection (2) above may not require the imposition of a charge; and subsection (6) below shall have effect subject to this.
- (6) The regulations may include such provision as the Secretary of State sees fit as regards charges; and nothing in subsections (7) to (9) below or section 190(1) below is to prejudice this.
- (7) The regulations may provide that the amount of a charge (if imposed) is to be at the authority's discretion or to be at its discretion subject to a maximum.



- (8) Where the regulations provide that a charge may not exceed a maximum amount they may—
  - (a) provide for one amount, or a scale of amounts to cover different prescribed cases;
  - (b) prescribe, as regards any amount, a sum or a method of calculating the amount.
- (9) The regulations—
  - (a) may confer discretion as to the amount in a case where an existing provision confers none (or vice versa);
  - (b) may, in a case where an existing provision confers a discretion as to the amount, confer a different one; and
  - (c) may include such supplementary, incidental, consequential or transitional provisions as appear to the Secretary of State to be necessary or expedient.
- (10) For the purposes of this section an existing provision is a provision of an Act passed before, or in the same Session as, this Act.
- (11) In this section “Act” includes a private or local Act.

## **152 Interpretation, consultation and commencement of ss. 150 and 151**

- (1) For the purposes of sections 150 and 151 above the following are excepted functions—
  - (a) functions relating to education in schools;
  - (b) functions relating to the provision of a public library service;
  - (c) functions relating to fire fighting, that is to say, the extinction of fire and the protection of life and property in case of fire;
  - (d) functions relating to the registration of electors;
  - (e) functions relating to the conduct of elections;
  - (f) all functions of the police except those relating to the removal, delivery, disposal, custody or immobilisation of vehicles.
- (2) For the purposes of those sections in their application to England and Wales, each of the following is a relevant authority—
  - (a) a county council;
  - (b) a district council;
  - (c) a London borough council;
  - (d) the Common Council of the City of London;
  - (e) the Council of the Isles of Scilly;
  - (f) a fire authority constituted by a combination scheme under the Fire Services Act 1947;
  - (g) a combined police authority established by an amalgamation scheme under the Police Act 1964;
  - (h) an authority established under section 10 of the Local Government Act 1985 (waste disposal authorities);
  - (i) a joint authority established by Part IV of that Act (police, fire services, civil defence and transport);
  - (j) an authority or board constituted a port health authority at any time by an order under section 2 of the Public Health (Control of Disease) Act 1984;

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- (k) a joint or special planning board constituted for a National Park by an order under paragraph 1 or paragraph 3 of Schedule 17 to the Local Government Act 1972; and
  - (l) the Broads Authority.
- (3) For the purposes of those sections in their application to Scotland, each of the following is a relevant authority—
- (a) a regional council,
  - (b) a district council,
  - (c) an islands council,
  - (d) a port local authority or joint port local authority constituted under section 172 of the Public Health (Scotland) Act 1897,
  - (e) a joint board or joint committee within the meaning of section 235(1) of the Local Government (Scotland) Act 1973, and
  - (f) a water development board within the meaning of section 109(1) of the Water (Scotland) Act 1980.
- (4) The Secretary of State may by order made by statutory instrument provide for any other body to be, or for a body to cease to be, a relevant authority for the purposes of those sections; and a statutory instrument containing an order under this subsection shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) In those sections “prescribed” means prescribed by the regulations concerned.
- (6) Before exercising any power to make regulations under section 150 or section 151 above, the Secretary of State shall consult—
- (a) as respects England and Wales, such representatives of local government, and
  - (b) as respects Scotland, such associations of local authorities,
- as appear to him to be appropriate.
- (7) This section and sections 150 and 151 above shall come into force at the expiry of the period of two months beginning on the day this Act is passed.

### **153 Charges: temporary traffic signs**

- (1) In section 65 of the Road Traffic Regulation Act 1984 (powers and duties of highways authorities and roads authorities as to placing of traffic signs) after subsection (3) there shall be inserted the following subsection—
- “(3A) No charge may be made—
- (a) in England and Wales, by a highway authority which is the council of a county, metropolitan district or London borough or the Common Council of the City of London, or
  - (b) in Scotland, by a local roads authority,
- with respect to the exercise of their power under subsection (1) above to permit a traffic sign to be placed on or near any road in their area if—
- (i) the sign conveys information of a temporary nature or is otherwise intended to be placed only temporarily; and
  - (ii) the sign is to be placed by a body which is prescribed for the purposes of this subsection as being a body appearing to the Secretary of State

to be representative of the interests of road users or any class of road users.”

- (2) Subsection (1) above does not apply in any case where, before this section comes into force, the payment of a charge has been agreed.

#### **154 Charges: library services**

- (1) For subsections (2) to (5) of section 8 of the Public Libraries and Museums Act 1964 (exceptions to restrictions on charging for library facilities) there shall be substituted the following subsections—

“(2) Subject to subsections (3) and (4) below, the Minister may by regulations—

- (a) authorise library authorities to make charges for such library facilities made available by them as may be specified in the regulations; and
- (b) make such provision as regards charges by library authorities for library facilities, other than provision requiring the making of charges, as he thinks fit.

- (3) Nothing in any regulations under this section shall authorise any charges to be made by a library authority for lending any written material to any person where—

- (a) it is the duty of the authority under section 7(1) above to make facilities for borrowing available to that person;
- (b) the material is lent in the course of providing such facilities to that person on any library premises;
- (c) the material is lent in a form in which it is readable without the use of any electronic or other apparatus; and
- (d) that person is not a person who has required any such apparatus to be used, or made available to him, for putting the material into such a form in order that he may borrow it;

but this subsection shall not prevent any regulations under this section from authorising the making of charges in respect of the use of any facility for the reservation of written materials or in respect of borrowed materials which are returned late or in a damaged condition.

- (4) Nothing in any regulations under this section shall authorise any charges to be made by a library authority for making facilities available for any person to do any of the following on any library premises, that is to say—

- (a) reading the whole or any part of any of the written materials for the time being held by the authority in a form in which they are readable without the use of any electronic or other apparatus or in microform;
- (b) consulting (whether or not with the assistance of any such apparatus or of any person) such catalogues, indexes or similar articles as are maintained, in any form whatever, exclusively for the purposes of that authority’s public library service.

- (5) Without prejudice to the generality of subsection (2) above, the power to make regulations under this section shall include power—

- (a) to confer a discretion as to the amount of any charge made under the regulations;

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- (b) to provide for such a discretion to be exercisable subject to such maximum amount or scale of maximum amounts as may be specified in or determined under the regulations;
- (c) to require library authorities to take such steps as may be specified or described in the regulations for making the amounts of their charges for library facilities known to the public;
- (d) to make such other incidental provision and such supplemental, consequential and transitional provision as the Minister thinks necessary or expedient; and
- (e) to make different provision for different cases, including different provision in relation to different persons, circumstances or localities.

(5A) The power to make regulations under this section shall be exercisable by statutory instrument; and no regulations may be made under this section unless a draft of them has been laid before and approved by a resolution of each House of Parliament.”

(2) After subsection (6) of that section there shall be inserted the following subsection—

“(7) In this section—

“library premises” means—

- (a) any premises which are occupied by a library authority and are premises where library facilities are made available by the authority, in the course of their provision of a public library service, to members of the public;
- (b) any vehicle which is used by a library authority for the purpose of providing such a service and is a vehicle in which facilities are so made available;

“the Minister” means—

- (a) in relation to library authorities whose areas are in England, the Lord President of the Council; and
- (b) in relation to library authorities whose areas are in Wales, the Secretary of State;

and

“written material” means—

- (a) any book, journal, pamphlet or other similar article; or
- (b) any reprographic copy (within the meaning of the Copyright, Designs and Patents Act 1988) of any article falling within paragraph (a) above or any other reproduction of such an article made by any means whatever.”

(3) This section shall come into force on such day as the Lord President of the Council and the Secretary of State, acting jointly, may by order made by statutory instrument appoint; and different days may be so appointed for different provisions or for different purposes.

#### *Miscellaneous local government provisions*

### **155 Emergency financial assistance to local authorities**

(1) In any case where—

- (a) an emergency or disaster occurs involving destruction of or danger to life or property, and
  - (b) as a result, one or more local authorities incur expenditure on, or in connection with, the taking of immediate action (whether by the carrying out of works or otherwise) to safeguard life or property, or to prevent suffering or severe inconvenience, in their area or among its inhabitants,

the Secretary of State may establish a scheme under this section for the giving of financial assistance to those authorities in respect of that expenditure.
- (2) Financial assistance given pursuant to a scheme under this section shall take the form of grants paid by the Secretary of State with the consent of the Treasury and, subject to that, the terms and conditions of a scheme shall be such as the Secretary of State considers appropriate to the circumstances of the particular emergency or disaster concerned.
- (3) Without prejudice to the generality of subsection (2) above, a scheme under this section may—
  - (a) make the payment of grants conditional upon the making of claims of a description specified in the scheme;
  - (b) make provision with respect to the expenditure qualifying for grant and the rates and amounts of grants;
  - (c) make provision in certain specified circumstances for the repayment of any grant, in whole or in part; and
  - (d) make different provision for different local authorities or descriptions of authority and for different areas.
- (4) In the application of this section to England and Wales, any reference to a local authority is a reference to—
  - (a) a county council;
  - (b) a district council;
  - (c) a London borough council;
  - (d) the Common Council of the City of London;
  - (e) the Council of the Isles of Scilly;
  - (f) the Receiver for the Metropolitan Police District; or
  - (g) a joint authority established by Part IV of the Local Government Act 1985, other than a metropolitan county passenger transport authority.
- (5) In the application of this section to Scotland, any reference to a local authority is a reference to—
  - (a) a regional council;
  - (b) a district council;
  - (c) an islands council; or
  - (d) a joint board or joint committee within the meaning of the Local Government (Scotland) Act 1973.
- (6) The reference in subsection (1)(b) above to expenditure incurred by a local authority includes, in the case of an authority in England and Wales, expenditure incurred in defraying, or contributing towards defraying, expenditure incurred by a parish or community council.
- (7) This section shall come into force on 1st April 1990.

**156 Contingency planning and co-ordination in respect of emergencies or disasters**

- (1) In section 138 of the Local Government Act 1972 (powers of principal councils with respect to emergencies or disasters) after subsection (1) there shall be inserted the following subsection—

“(1A) If a principal council are of the opinion that it is appropriate to undertake contingency planning to deal with a possible emergency or disaster which, if it occurred,—

- (a) would involve destruction of or danger to life or property, and
- (b) would be likely to affect the whole or part of their area,

they may incur such expenditure as they consider necessary on that planning (whether relating to a specific kind of such possible emergency or disaster or generally in relation to possible emergencies or disasters falling within paragraphs (a) and (b) above).”

- (2) In subsection (3) of that section—

- (a) for the words from the beginning to “authorise” there shall be substituted “Nothing in this section authorises”; and
- (b) for the words “the power conferred by that subsection is” there shall be substituted “the powers conferred by subsections (1) and (1A) above are”.

- (3) At the end of the section there shall be added the following subsections—

“(5) With the consent of the Secretary of State, a metropolitan county fire and civil defence authority and the London Fire and Civil Defence Authority may incur expenditure in co-ordinating planning by principal councils in connection with their functions under subsection (1) above.

(6) In this section “contingency planning” means the making, keeping under review and revising of plans and the carrying out of training associated with the plans.”

**157 Commutation of, and interest on, periodic payments of grants etc**

- (1) In any case where, by virtue of any enactment, the Secretary of State has a power or duty to make to a local authority any annual or other periodic payments by way of contribution, grant or subsidy towards expenditure incurred or to be incurred by the local authority, the Secretary of State—

- (a) may determine to commute any such payments which would otherwise fall due on or after 1st April 1990 either into a single payment or into such number of payments (being less than would otherwise be payable) as he considers appropriate; and
- (b) may, if he thinks it appropriate, pay to the Public Works Loans Commissioners the whole or any part of any single or other payment determined under paragraph (a) above so as to reduce or extinguish such debt (whether then due or not) of the local authority to those Commissioners as the Secretary of State thinks fit.

- (2) The amount required to reduce or extinguish a debt as mentioned in paragraph (b) of subsection (1) above shall be such as may be determined by the Public Works Loans Commissioners and where, by virtue of that paragraph, only part of a commuted payment is paid to those Commissioners, the balance shall be paid to the local authority concerned.

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- (3) Subsection (1) above applies whether the annual or other periodic payments began, or would otherwise begin, before, on or after the passing of this Act and applies notwithstanding anything in any enactment requiring the payments to be made over a period of twenty years or any other specified period.
- (4) A single or other payment falling to be made by virtue of subsection (1) above is in this section referred to as a “commuted payment” and the calculation of the amount of any commuted payment shall be such as appears to the Secretary of State to be appropriate.
- (5) In any case where the amount of any annual or other periodic payment such as is mentioned in subsection (1) above is, at the passing of this Act, calculated by reference to a rate of interest which varies from time to time, the Secretary of State may substitute a fixed rate of interest.
- (6) In this section “local authority”, as respects England and Wales, means any of the following—
- (a) a county council;
  - (b) a district council;
  - (c) a London borough council;
  - (d) the Common Council of the City of London;
  - (e) the Council of the Isles of Scilly;
  - (f) the Receiver for the Metropolitan Police District;
  - (g) a police authority constituted under section 2 of the Police Act 1964 or a combined police authority established by an amalgamation scheme under that Act;
  - (h) a joint authority established by Part IV of the Local Government Act 1985; and
  - (i) a residuary body established under Part VII of that Act;
- and, as respects Scotland, means a regional, islands or district council or a joint board or joint committee within the meaning of section 235(1) of the Local Government (Scotland) Act 1973.
- (7) If, after a commuted payment has been made to a local authority or to the Public Works Loans Commissioners, it appears to the Secretary of State that the payment was smaller or greater than it should have been (whether by virtue of a miscalculation, the occurrence of any event, the failure to comply with any condition or otherwise) the Secretary of State may, as the case may require,—
- (a) make a further payment to the authority concerned or to those Commissioners; or
  - (b) require the repayment or payment to him by that authority of such sum as he may direct.
- (8) Without prejudice to the operation of the preceding provisions of this section, with respect to—
- (a) any contribution in respect of an expense incurred on or after 1st April 1990; and
  - (b) so much of any contribution in respect of an expense incurred before that date as has not been made before that date,
- section 569 of the Housing Act 1985 (contribution by Secretary of State to certain expenses incurred by local housing authorities) shall be amended as follows—

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- (i) in subsection (2) (which relates to contributions as annual payments) for the words following “shall be” there shall be substituted the words “equal to the relevant percentage of the amount of the expense incurred”; and
  - (ii) subsection (5) (which relates to annual loan charges) shall cease to have effect.
- (9) Without prejudice to the generality of section 230 of the Local Government Act 1972 or section 235(1) of the Local Government (Scotland) Act 1973 (local authorities' duty to make reports and returns to the Secretary of State), every local authority and the Inner London Education Authority shall furnish to the Secretary of State such information as he may by notice in writing reasonably require for the purposes of this section and, if the notice so specifies, any such information shall be certified and audited in such manner and supplied not later than such date and in such form as may be so specified.
- (10) Nothing in this section applies in relation to any payments to which, under Part IV of Schedule 15 to the Housing Act 1985 (superseded contributions etc.: town development subsidy), provision already exists for the commutation of payments.

## **158 Electronic transfer of documents**

- (1) In subsection (2) of section 9 of the Local Land Charges Act 1975, the words “A requisition under this section must be in writing, and” shall be omitted.
- (2) In subsection (2) of section 14 of that Act after the word “include” there shall be inserted “(a)”, and at the end of that subsection there shall be inserted the following paragraphs—
  - “(b) power to make rules providing for the use of electronic means in the making of requisitions for, and in the issue of, official search certificates, notwithstanding subsection (3) of section 231 of the Local Government Act 1972 (service of documents on local authorities) provided that—
    - (i) such rules shall not provide that a requisition is duly made by electronic means, except where the local authority to whom it is made consents to the use of those means, or that an official search certificate is duly issued by electronic means, except where the person requiring the search consents to the use of those means; and
    - (ii) such consent may be given either generally or in relation to a specified document or description of documents, and either before or after the making of the requisition or the issue of the certificate; and
  - (c) power to make rules modifying the application of sections 10 and 11 above in cases where—
    - (i) the rules provide for the making of a requisition for, or the issuing of, an official search certificate by electronic means, and
    - (ii) there has been any error or failure in those means.”

## **159 Prevention of continuance or recurrence of default of local authority: Scotland**

- (1) Section 211 of the Local Government (Scotland) Act 1973 (provision for default of local authority) shall be amended in accordance with this section.



(2) After subsection (2) there shall be inserted the following subsections—

“(2A) If the Secretary of State or appropriate Minister—

- (a) is about to make an order under subsection (2) above; and
- (b) is satisfied that the failure to which the order relates has continued or recurred,

he may, in that order and without any local inquiry, declare the authority to be in default in respect of the continuance or recurrence of the failure and direct them for the purpose of remedying the default to take such steps and within such time or times as may be specified in the order.

(2B) The Secretary of State or appropriate Minister may, in an order under subsection (2) above, notify the local authority that any continuance or recurrence of the failure in respect of which the authority have been declared to be in default happening after the date of the order may be made the subject of an application to the Court of Session under subsection (3A) below.”

(3) After subsection (3) there shall be inserted the following subsection—

“(3A) If—

- (a) a local authority have been notified under subsection (2B) above; and
- (b) there has been any such continuance or recurrence as is mentioned in that subsection of the failure to which the notification relates,

the Court of Session may, on the application of the Lord Advocate on behalf of the Secretary of State or appropriate Minister, order specific performance of the functions in respect of which there has been such continuance or recurrence of the failure and do otherwise as to the court appears to be just.”

## **160 Welsh language names for local authorities**

- (1) For the purpose of enabling local authorities in Wales to be known solely by Welsh language names, the provisions of the Local Government Act 1972 specified in Schedule 8 to this Act shall be amended in accordance with that Schedule.
- (2) Any reference in the provisions amended by Schedule 8 to this Act to a specially convened meeting of a council is a reference to a meeting of which notice is given as required by Schedule 12 to the Local Government Act 1972 but with the substitution for the words “three clear days” in paragraph 4(2) of that Schedule (principal councils) or, as the case may be, paragraph 26(2) (community councils) of “fourteen clear days”.

### *Miscellaneous housing provisions*

## **161 Housing authorities not required to keep a housing stock**

- (1) At the end of section 9 of the Housing Act 1985 (provision of housing accommodation) there shall be added the following subsection—

“(5) Nothing in this Act shall be taken to require (or to have at any time required) a local housing authority itself to acquire or hold any houses or other land for the purposes of this Part.”

- (2) At the end of section 2 of the Housing (Scotland) Act 1987 (powers of local authorities to provide housing accommodation) there shall be added the following subsection—

“(6) Nothing in this Act shall be taken to require (or to have at any time required) a local authority itself to acquire or hold any houses or other land for the purposes of this Part.”

## **162 Determination of rents**

In section 24 of the Housing Act 1985 (rents), there shall be added at the end the following subsections—

“(3) In exercising their functions under this section, a local housing authority shall have regard in particular to the principle that the rents of houses of any class or description should bear broadly the same proportion to private sector rents as the rents of houses of any other class or description.

(4) In subsection (3) “private sector rents”, in relation to houses of any class or description, means the rents which would be recoverable if they were let on assured tenancies within the meaning of the Housing Act 1988 by a person other than the authority.”

## **163 Exchanges between secure and assured tenants**

- (1) Section 92 of the Housing Act 1985 (assignment of secure tenancies by way of exchange) shall be amended in accordance with subsections (2) and (3) below.

- (2) At the end of subsection (1) there shall be added the words “or to an assured tenant who satisfies the conditions in subsection (2A)”.

- (3) After subsection (2) there shall be inserted the following subsection—

“(2A) The conditions to be satisfied with respect to an assured tenant are—

(a) that the landlord under his assured tenancy is either the Housing Corporation, Housing for Wales, a registered housing association or a housing trust which is a charity; and

(b) that he intends to assign his assured tenancy to the secure tenant referred to in subsection (1) or to another secure tenant who satisfies the condition in subsection (2).”

- (4) In section 117 of the Housing Act 1985 (index of defined expressions for Part IV) before the entry relating to “cemetery” there shall be inserted—

“assured tenancy

section 622”.

## **164 Exception to the right to buy in case of certain dwelling-houses for persons of pensionable age**

- (1) In Schedule 5 to the Housing Act 1985 (exceptions to the right to buy), for paragraph 11 (certain dwelling-houses for persons of pensionable age) there shall be substituted the following paragraph—

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- “11 (1) The right to buy does not arise if the Secretary of State has determined, on the application of the landlord, that it is not to be capable of being exercised with respect to the dwelling-house.
- (2) The Secretary of State shall so determine if, and only if, he is satisfied that the dwelling-house—
- (a) is particularly suitable, having regard to its location, size, design, heating system and other features, for occupation by persons of pensionable age, and
  - (b) was let to the tenant or a predecessor in title of his for occupation by a person of pensionable age (whether the tenant or predecessor or another person).
- (3) The Secretary of State shall for the purposes of this paragraph disregard the presence of any feature provided by the tenant or a predecessor in title of his.
- (4) An application for a determination under this paragraph shall be made within the period for service of the landlord’s notice under section 124 (notice admitting or denying right to buy).
- (5) This paragraph does not apply unless the dwelling-house concerned was first let before 1st January 1990.”
- (2) Subsection (1) above does not apply in any case where the tenant’s notice claiming to exercise the right to buy was served before the day on which this section comes into force.
- (3) For the purposes of subsection (2) above, no account shall be taken of any steps taken under section 177 of the Housing Act 1985 (amendment or withdrawal and re-service of notice to correct mistakes).

## **165 Unfit housing etc**

- (1) In the Housing Act 1985,—
- (a) Part VI (repair notices) shall be amended in accordance with Part I of Schedule 9 to this Act;
  - (b) Part IX (slum clearance) shall be amended in accordance with Part II of that Schedule;
  - (c) Part XI (houses in multiple occupation) shall be amended in accordance with Part III of that Schedule;
  - (d) Part XVII (compulsory purchase and land compensation) shall be amended in accordance with Part IV of that Schedule; and
  - (e) Part XVIII (miscellaneous and general) shall be amended in accordance with Part V of that Schedule.
- (2) Part VII of the Housing Act 1985 (improvement notices) shall cease to have effect.
- (3) For any financial year beginning after the day appointed for the coming into force of this subsection the following provisions of this section shall have effect in place of sections 312 to 314 of the Housing Act 1985 (slum clearance subsidy); and in those provisions “slum clearance functions” means any of the functions under the provisions of Part IX of that Act relating to—

- (a) the demolition, closing or purchase of unfit premises,
  - (b) the demolition of obstructive buildings, and
  - (c) clearance areas,

but does not include functions under sections 308 to 311 of that Act (owner's redevelopment or improvement).
- (4) On such conditions as he may determine the Secretary of State may pay slum clearance subsidy to a local housing authority in respect of any financial year for which, applying such method of calculation as may be determined by the Secretary of State, the authority have incurred a loss in connection with the exercise of their slum clearance functions; and the rate or rates of the subsidy and the manner in which it is paid shall be such as may be determined by him.
- (5) If for any financial year, applying such method of calculation as is referred to in subsection (4) above, a local housing authority have incurred a surplus in connection with the exercise of their slum clearance functions, the Secretary of State may require the authority to pay to him such sum as he may determine in respect of that surplus, together with interest thereon from such time and at such rate or rates as he may determine.
- (6) Any determination of the Secretary of State under subsection (4) or subsection (5) above—
  - (a) shall be made with the consent of the Treasury;
  - (b) may be made generally or with respect to a particular local housing authority or description of authority, including a description framed by reference to authorities in a particular area; and
  - (c) may make different provision for different cases or descriptions of case.
- (7) If, before the declaration of a renewal area under Part VII of this Act, a local housing authority are satisfied that the rate of slum clearance subsidy which, in accordance with a determination under subsection (4) above, would otherwise be applicable to the authority will not be adequate, bearing in mind the action they propose to take with regard to the area, they may, before making the declaration, apply to the Secretary of State for a subsidy at a higher rate in respect of that area.
- (8) An application under subsection (7) above shall be made in such form and contain such particulars as the Secretary of State may determine; and, if such an application is made, the authority shall not declare the area concerned to be a renewal area until the application is approved, refused or withdrawn.
- (9) If an application under subsection (7) above is approved, the Secretary of State may pay slum clearance subsidy in respect of the area concerned at such higher rate as he may determine under subsection (4) above.

## **166 Amendments relating to defective housing**

- (1) Part XVI of the Housing Act 1985 (in this section referred to as “the 1985 Act”) and Part XIV of the Housing (Scotland) Act 1987 (in this section referred to as “the 1987 Act”) (assistance for owners of defective housing) shall each be amended in accordance with this section.
- (2) In section 537 of the 1985 Act and section 265 of the 1987 Act (determination of form of assistance to which applicant is entitled) in subsection (1) after the word “determine” there shall be inserted “as soon as reasonably practicable”.

- (3) In section 539 of the 1985 Act and section 267 of the 1987 Act (meaning of “work required for reinstatement” etc.) after subsection (1) there shall be inserted the following subsection—
- “(1A) In any case where—
- (a) the most satisfactory way of dealing with the qualifying defect is substantially to demolish the building that consists of or includes the defective dwelling or a part of that building, and
  - (b) it is practicable to rebuild the building or part concerned on, or substantially on, its existing foundations and reconstruct the dwelling to the same, or substantially the same, plan,
- the work required to carry out those operations shall be regarded for the purposes of this Part as work required to reinstate the defective dwelling.”
- (4) In section 561 of the 1985 Act and section 289 of the 1987 Act (Secretary of State’s control over designation, variation or revocation)—
- (a) in subsection (2) after the word “before” there shall be inserted “the cut-off date or if it is later” and after the words “two months” there shall be inserted “or such longer period as the Secretary of State may direct for the purposes of this subsection under subsection (2A) below”;
  - (b) after that subsection there shall be inserted the subsection specified in subsection (5) below; and
  - (c) in subsection (3) for the words “within that period” there shall be substituted “before the cut-off date or, if it is later, the expiry of the period for the time being specified in or for the purposes of subsection (2) above”.
- (5) The subsection referred to in subsection (4)(b) above is as follows—
- “(2A) If, within the period for the time being specified in or (by virtue of the previous operation of this subsection) for the purposes of subsection (2) above, the Secretary of State is satisfied that he does not have reasonably sufficient information to enable him to come to a decision with respect to the resolution concerned, he may direct for the purposes of that subsection that it shall have effect as if for the period so specified there were substituted such longer period as is specified in the direction.”
- (6) In section 567 of the 1985 Act (modifications of Part XVI in relation to shared ownership leases) for subsections (1) to (3) there shall be substituted the following subsections—
- “(1) If it appears to a local housing authority that the interest of a person eligible for assistance in respect of a defective dwelling in their area is—
- (a) a shared ownership lease, or
  - (b) the freehold acquired under the terms of a shared ownership lease,
- the authority shall prepare and submit to the Secretary of State a scheme providing for the provisions of this Part to have effect, in their application to such a case, subject to such modifications as may be specified in the scheme.
- (2) A scheme under subsection (1) above shall not have effect unless approved by the Secretary of State; and any such approval may be made conditional upon compliance with requirements specified by him.”

- (7) Any power of the Secretary of State to make regulations under subsection (4) of section 567 of the 1985 Act shall cease to have effect; and in paragraph (d) of that subsection after the word “class” there shall be inserted “or description”.

#### **167 Reports to tenants etc. on local housing authority functions**

- (1) In accordance with the provisions of this section, every local housing authority shall, for each year, furnish to each person who at the end of that year is one of their housing revenue account tenants a report containing such information as may be determined by the Secretary of State relating to the functions of the authority as a local housing authority during that year (including functions which in that year were exercised by any other person as agent of the authority).
- (2) In this section “year” means a period of twelve months beginning on 1st April; and the report relating to any year shall be furnished as soon as practicable after the end of that year and, in any event, not later than six months after the end of that year.
- (3) In this section “housing revenue account tenant”, in relation to a local housing authority, means a person who, as tenant or licensee, occupies a house or other property within the authority’s Housing Revenue Account; and, in the case of joint tenants or joint licensees, it shall be a sufficient compliance with the obligation under subsection (1) above to furnish each housing revenue account tenant with a report that a single copy of it is furnished to the tenants or licensees jointly.
- (4) At the same time as they furnish a report under this section to their housing revenue account tenants, a local housing authority shall send a copy of the report to the Secretary of State.
- (5) The power to make a determination under subsection (1) above may be so exercised as to make different provision for different cases or descriptions of cases, including different provision for different areas, for different local housing authorities or for different descriptions of local housing authorities.
- (6) The reference in subsection (3) above to a house or other property within an authority’s Housing Revenue Account shall be construed in accordance with section 74(5) above.
- (7) In this section “tenant” has the same meaning as in the Housing Act 1985.
- (8) Before making a determination under this section, the Secretary of State shall consult such representatives of local government as appear to him to be appropriate.

#### **168 Contributions towards costs of housing mobility arrangements**

- (1) The Secretary of State may with the consent of the Treasury make grants or loans towards the cost of arrangements for enabling or assisting persons to move and become,—
  - (a) in England and Wales, tenants or licensees of dwellings; and
  - (b) in Scotland, tenants of houses.
- (2) The grants or loans may be made subject to such conditions as the Secretary of State may determine and may be made so as to be repayable or, as the case may be, repayable earlier if there is a breach of such a condition.
- (3) In this section—

“dwelling” means a building or a part of a building occupied or intended to be occupied as a separate dwelling;

“house” has the same meaning as in the Housing (Scotland) Act 1987; and

“tenant” does not include a tenant under a long lease within the meaning of the Landlord and Tenant Act 1987 or, as respects Scotland, under a lease for a period exceeding 20 years.

- (4) Section 107 of the Housing Act 1985 and section 80 of the Housing (Scotland) Act 1987 (which make provision similar to that made by the preceding provisions of this section, but limited to secure tenants) shall cease to have effect.

**169 Powers of local authorities and Secretary of State as respects services etc. for owners and occupiers of houses for work on them**

- (1) A relevant authority shall have power to provide professional, technical and administrative services for owners or occupiers of dwellings in connection with their arranging or carrying out relevant works or to encourage or facilitate the carrying out of such works, whether or not on payment of such charges as the authority may determine.
- (2) Works are relevant works in relation to a dwelling or, as the case may be, a dwelling in any area, if they are works of any of the following descriptions, that is to say—
- (a) works to cause the dwelling to be fit for human habitation,
  - (b) where the occupant is disabled, works for any of the purposes specified in section 114(3) or (4) above,
  - (c) works for any of the purposes specified in section 115(3) above, and
  - (d) works for any of the purposes specified in or under section 131(1) above.
- (3) It shall be the duty of a relevant authority exercising any power conferred by subsection (1) above—
- (a) to consider whether or not to make a charge for exercising it; and
  - (b) to take such measures as are reasonably available to them to secure contributions from other persons towards the cost of exercising it.
- (4) A relevant authority shall have power to give financial assistance in any form to—
- (a) any housing association,
  - (b) any charity, or
  - (c) any body, or body of any description, approved by the Secretary of State,
- towards the cost of the provision by that association, charity or body of services of any description for owners or occupiers of dwellings in arranging works of maintenance, repair or improvement or the encouraging or facilitating the carrying out of such works.
- (5) It shall be the duty of a relevant authority—
- (a) in deciding whether to exercise any power conferred by subsection (4) above in relation to any association, charity or body, to have regard to the existence and extent of any financial assistance available from other persons to that association, charity or body; and
  - (b) in exercising any power conferred by subsection (4) above in relation to any association, charity or body—
    - (i) to have regard to whether that association, charity or body has made or will make charges and their amount; and

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- (ii) to encourage the association, charity or body to take such measures as are reasonably available to them to secure contributions from other persons.
- (6) The Secretary of State may, with the consent of the Treasury, give financial assistance in any form to any person in respect of expenditure incurred or to be incurred by that person in connection with the provision, whether or not by that person, of services of any description for owners or occupiers of dwellings in arranging or carrying out works of maintenance, repair or improvement, or in connection with the encouraging or facilitating, whether or not by that person, the carrying out of such works.
- (7) The giving of financial assistance under subsection (6) above shall be on such terms (which may include terms as to repayment) as the Secretary of State, with the consent of the Treasury, considers appropriate.
- (8) The person receiving assistance shall comply with the terms on which it is given and compliance may be enforced by the Secretary of State.
- (9) In this section—
  - “charity” means any institution, corporate or not, which is established for charitable purposes and is subject to the control of the High Court in the exercise of the Court’s jurisdiction with respect to charities;
  - “housing association” means a housing association within the meaning of section 1(1) of the Housing Associations Act 1985, or a body established by such a housing association for the purpose of, or having among its purposes or objects, those mentioned in section 4(3)(e) of that Act (providing services of any description for owners or occupiers of houses in arranging or carrying out works of maintenance, repair or improvement, or encouraging or facilitating the carrying out of such works);
  - “local housing authority” shall be construed in accordance with section 1 of the Housing Act 1985; and
  - “relevant authority” means a local housing authority or county council.

**170 Powers of local authorities and Secretary of State as respects services, etc., for owners and occupiers of houses for work on them: Scotland**

- (1) A relevant authority shall have power to provide professional, technical and administrative services for owners or occupiers of houses in connection with their arranging or carrying out relevant works or to encourage or facilitate the carrying out of such works, whether or not on payment of such charges as the authority may determine.
- (2) Relevant works are such works as may be specified in regulations made by the Secretary of State and such works may be so specified by reference to such factors (including factors relating to persons of such descriptions as may be so specified) as the Secretary of State thinks fit.
- (3) It shall be the duty of a relevant authority exercising any power conferred by subsection (1) above—
  - (a) to consider whether or not to make a charge for exercising it; and
  - (b) to take such measures as are reasonably available to them to secure contributions from other persons towards the cost of exercising it.
- (4) A relevant authority shall have power to give financial assistance in any form to—



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- (a) any housing association,
  - (b) any charity, or
  - (c) any body, or body of any description, approved by the Secretary of State,towards the cost of the provision by that association, charity or body of services of any description for owners or occupiers of houses in arranging works of maintenance, repair or improvement or the encouraging or facilitating the carrying out of such works.
- (5) It shall be the duty of a relevant authority—
  - (a) in deciding whether to exercise any power conferred by subsection (4) above in relation to any association, charity or body, to have regard to the existence and extent of any financial assistance available from other persons to that association, charity or body; and
  - (b) in exercising any power conferred by subsection (4) above in relation to any association, charity or body—
    - (i) to have regard to whether that association, charity or body has made or will make charges and their amount; and
    - (ii) to encourage the association, charity or body to take such measures as are reasonably available to them to secure contributions from other persons.
- (6) The Secretary of State may, with the consent of the Treasury, give financial assistance in any form to any person in respect of expenditure incurred or to be incurred by that person in connection with the provision, whether or not by that person, of services of any description for owners or occupiers of houses in arranging or carrying out works of maintenance, repair or improvement or in connection with the encouraging or facilitating, whether or not by that person, the carrying out of such works.
- (7) The giving of financial assistance under subsection (6) above shall be on such terms (which may include terms as to repayment) as the Secretary of State, with the consent of the Treasury, considers appropriate.
- (8) The person receiving assistance shall comply with the terms on which it is given and compliance may be enforced by the Secretary of State.
- (9) In this section—
  - “charity” means any body, corporate or not, established for charitable purposes;
  - “charitable purposes” shall be construed in the same way as if it were contained in the Income Tax Acts;
  - “house” has the meaning given by section 338 of the Housing (Scotland) Act 1987;
  - “housing association” means a housing association within the meaning of section 1(1) of the Housing Associations Act 1985, or a body established by such a housing association for the purpose of, or having among its purposes or objects, those mentioned in section 4(3)(e) of that Act (providing services of any description for owners or occupiers of houses in arranging or carrying out works of maintenance, repair or improvement, or encouraging or facilitating the carrying out of such works);
  - “relevant authority” means a regional, islands or district council.

**171 Winding up of home purchase assistance scheme**

- (1) The Secretary of State may by order make provision for the purpose of bringing to an end the scheme for assistance for first-time buyers which—
  - (a) as respects England and Wales, is contained in sections 445 to 450 of the Housing Act 1985, and
  - (b) as respects Scotland, is contained in sections 222 to 227 of the Housing (Scotland) Act 1987,
 and in the following provisions of this section, the enactments specified in paragraphs (a) and (b) above together with any orders and directions made under those enactments are referred to as “the assistance legislation”.
- (2) Without prejudice to the generality of the power conferred by subsection (1) above, an order under that subsection—
  - (a) may specify a date or dates with effect from which account will no longer be taken under the assistance legislation of matters specified in the order;
  - (b) may vary the terms of advances to lending institutions so as to commute what would otherwise be a number of payments or repayments to or by such an institution into a single payment or a smaller number of payments of such amount and payable at such time or times as may be determined in accordance with the order; and
  - (c) may provide for the amendment or repeal, in whole or in part, of the assistance legislation with effect from such date or dates and subject to such transitional provisions as may be specified in the order.
- (3) The following powers, namely,—
  - (a) the powers conferred on the Secretary of State by subsection (3) of section 446 of the Housing Act 1985 and subsection (3) of section 223 of the Housing (Scotland) Act 1987 to relax or modify the conditions in subsection (2) of each of those sections respectively (conditions qualifying a purchaser for assistance), and
  - (b) any power to make an order under any provision of the assistance legislation, may be so exercised as to make provision for the purpose referred to in subsection (1) above.
- (4) The power to make an order under subsection (1) above shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

**172 Transfer of new town housing stock**

- (1) Subject to the following provisions of this section, the Secretary of State may by regulations make provision for requiring and authorising each new town corporation to take such steps as may be prescribed for making and giving effect to proposals for disposing of their housing stock, either by transferring it as a whole to a prescribed person or by transferring different parts of it to different prescribed persons.
- (2) Regulations under subsection (1) above shall not require a new town corporation to transfer any dwelling or associated property, rights, liabilities or obligations to any person other than—
  - (a) the district council within whose district the dwelling is situated; or

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- (b) a person approved for the purposes of, and in accordance with, the regulations by the Housing Corporation or Housing for Wales.
- (3) Regulations under subsection (1) above shall not require a new town corporation to give effect to a proposal for the transfer of any dwelling if the dwelling is one in respect of which a notice has been served under section 122 of the Housing Act 1985 (notice of a claim to exercise the right to buy) before the prescribed time and such other conditions as may be prescribed are satisfied.
- (4) A new town corporation shall not, in pursuance of any regulations under subsection (1) above, transfer any dwellings, or any associated property, rights, liabilities or obligations, to any person except with the consent of the Secretary of State; and the Secretary of State shall not give his consent to a proposed transfer unless he is satisfied—
  - (a) that there has been compliance with all such requirements with respect to the publication of information about the proposal and matters connected with its implementation, and with respect to consultation about the proposal, as are prescribed;
  - (b) that all such steps have been taken as are prescribed for the purpose of protecting the interests of the occupiers of the dwellings or the interests of the occupiers of any dwellings excluded from the proposal by virtue of subsection (3) above or any such consultation; and
  - (c) that the terms on which the transfer is made—
    - (i) require such price to be paid for the property transferred as appears to him to be the price which, on the prescribed assumptions, it would realise if sold on the open market by a willing vendor; and
    - (ii) include all such other terms as are prescribed.
- (5) Regulations under subsection (1) above may contain such incidental provision and such supplemental, consequential and transitional provision in connection with their other provisions as the Secretary of State considers appropriate, including, without prejudice to the generality of the foregoing, provision corresponding to subparagraphs (2) and (3) of paragraph 2 of Schedule 12 to the Housing Act 1988 (matters relating to registration of title).
- (6) Subject to subsection (7) below, Part III of the New Towns Act 1981 (transfer of dwellings and associated property to district councils) shall cease to have effect.
- (7) Nothing in subsection (6) above shall—
  - (a) affect the operation after the time when that subsection comes into force of so much of any transfer scheme made under Part III of the said Act of 1981 before that time as contains management arrangements with respect to land in which a new town corporation have an interest;
  - (b) affect the application after that time of section 50 of that Act (financial arrangements) in relation to any transfer scheme made under that Part before that time; or
  - (c) prevent the Secretary of State from exercising his power to make grants to a district council under section 51A of that Act (grants in respect of defects in transferred dwellings) where the grants are paid before the 1st April 1990 or such later date as the Secretary of State may by order made by statutory instrument appoint in relation to that council;and a statutory instrument containing an order under this subsection shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(8) In this section—

“dwelling” means any building or part of a building occupied, or erected or adapted for occupation, as a dwelling or as a hostel (including any land belonging to it or usually enjoyed with it);

“housing stock”, in relation to a new town corporation, means—

- (a) the dwellings (whether or not in the area of a particular new town) which are vested in that corporation and were erected, adapted or acquired for occupation as dwellings; and
- (b) except so far as may be prescribed, any associated property, rights, liabilities and obligations of that corporation;

“liabilities and obligations”, in relation to a new town corporation, includes liabilities and obligations which, apart from the regulations, would not be capable of being assigned or transferred by the corporation, including liabilities and obligations under Part V of the Housing Act 1985 (the right to buy);

“new town corporation” means the Commission for the New Towns, the Development Board for Rural Wales or a development corporation, within the meaning of the New Towns Act 1981; and

“prescribed” means prescribed by or determined under regulations under subsection (1) above.

(9) For the purposes of this section the following property, rights, liabilities and obligations of a new town corporation shall be treated as associated with any dwellings comprised in their housing stock, that is to say—

- (a) any interest of the corporation in any land occupied or set aside for occupation or use with the dwellings;
- (b) any interest of the corporation in land in the vicinity of the dwellings which is held by them for the benefit or use of the persons living in those dwellings (rather than the inhabitants of a new town as a whole) or for providing facilities for the persons living in those dwellings, and any other property and any rights of the corporation so held;
- (c) any property and rights held by the corporation—
  - (i) for the administration of an estate comprising the dwellings or any associated property;
  - (ii) for the maintenance or service of the dwellings or any associated property; or
  - (iii) otherwise in connection with any such property;
- (d) any rights, liabilities and obligations which the corporation have in connection with any of the dwellings or any associated property or in connection with any dwellings which were previously part of their housing stock;
- (e) any interest of the corporation in land set aside by them as an open space for the use or enjoyment of persons living in the dwellings (rather than for the use of the inhabitants of a new town as a whole).

### **173 Consent required for subsequent disposals**

- (1) Where a dwelling which is for the time being subject to a secure tenancy is transferred under section 172 above to a person approved as mentioned in subsection (2)(b) of that section (in this section referred to as an “approved person”), that person shall not dispose of it except—

- (a) with the consent of the Secretary of State, which may be given either unconditionally or subject to conditions; or
  - (b) by an exempt disposal, as defined in section 81(8) of the Housing Act 1988;and any reference in the following provisions of this section to an initial transfer is a reference to the transfer of a dwelling to an approved person under section 172 above.
- (2) Where an estate or interest in a dwelling of the approved person who acquired it on the initial transfer has been mortgaged or charged, the prohibition in subsection (1) above applies also to a disposal by the mortgagee or chargee in exercise of a power of sale or leasing, whether or not the disposal is in the name of the approved person; and in any case where—
  - (a) by operation of law or by virtue of an order of a court, the dwelling which has been acquired on the initial transfer passes or is transferred from the approved person to another person, and
  - (b) that passing or transfer does not constitute a disposal for which consent is required under this section,this section (including, where there is more than one such passing or transfer, this subsection) shall apply as if the other person to whom the dwelling passes or is transferred were the approved person.
- (3) Where subsection (1) above applies—
  - (a) the new town corporation by whom the initial transfer is made shall furnish to the approved person a copy of the consent of the Secretary of State under section 172(4) above; and
  - (b) the instrument by which the initial transfer is effected shall contain a statement in a form approved by the Chief Land Registrar that the requirement of this section as to consent applies to a subsequent disposal of the dwelling by the approved person.
- (4) For the purposes of this section the grant of an option to purchase the fee simple or any other interest in a dwelling is a disposal and a consent given to such a disposal extends to a disposal made in pursuance of the option.
- (5) Before giving any consent required by virtue of this section, the Secretary of State—
  - (a) shall satisfy himself that the person who is seeking the consent has taken appropriate steps to consult every tenant of any dwelling proposed to be disposed of; and
  - (b) shall have regard to the responses of any such tenants to that consultation.
- (6) If, apart from subsection (7) below, the consent of the Housing Corporation or Housing for Wales would be required under section 9 of the Housing Associations Act 1985 (control of dispositions of land by housing associations) for a disposal in respect of which, by virtue of subsection (1) above, the consent of the Secretary of State is required, the Secretary of State shall consult that body before giving his consent for the purposes of this section.
- (7) No consent shall be required under the said section 9 for any disposal in respect of which consent is given in accordance with subsection (6) above.
- (8) Where the title of the new town corporation to the dwelling which is transferred by the initial transfer is not registered, and the initial transfer is a conveyance, grant or assignment of a description mentioned in section 123 of the Land Registration Act 1925 (compulsory registration of title)—

- (a) that section applies in relation to the instrument by which the initial transfer is effected, whether or not the dwelling is in an area in which an Order in Council under section 120 of that Act (areas of compulsory registration) is in force;
  - (b) the corporation shall give the approved person a certificate in a form approved by the Chief Land Registrar stating that the corporation is entitled to make the transfer subject only to such encumbrances, rights and interests as are stated in the instrument by which the initial transfer is effected or summarised in the certificate; and
  - (c) for the purpose of registration of title, the Chief Land Registrar shall accept such a certificate as evidence of the facts stated in it, but if as a result he has to meet a claim against him under the Land Registration Acts 1925 to 1986 the corporation by whom the initial transfer was made is liable to indemnify him.
- (9) On an application being made for registration of a disposition of registered land or, as the case may be, of the title under a disposition of unregistered land, if the instrument by which the initial transfer is effected contains the statement required by subsection (3) above, the Chief Land Registrar shall enter in the register a restriction stating the requirement of this section as to consent to a subsequent disposal.
- (10) In this section—
- (a) “dwelling” and “new town corporation” have the same meaning as in section 172 above; and
  - (b) “secure tenancy” has the meaning assigned by section 79 of the Housing Act 1985.

#### **174 Payment of disposal cost by instalments**

- (1) Part IV of the Housing Act 1988 (change of landlord: secure tenants) shall be amended in accordance with this section.
- (2) At the end of section 99 (determination of purchase price) there shall be added the following subsections—
  - “(7) In a notice under subsection (1) above or by a separate notice given to the applicant not later than seven days after the date of a determination under subsection (6) above, the landlord may notify the applicant that if there is a disposal cost which is such that, in accordance with regulations under section 104(2A) below, it may be paid by instalments, the landlord intends to pay that cost by instalments.
  - (8) Where the landlord notifies the applicant as mentioned in subsection (7) above, he shall furnish to the applicant, in such form and certified in such manner as may be prescribed, such information as may be prescribed in order to enable the applicant to consider the application of the regulations to the disposal cost and to assess the likely effect of the payment by instalments.”
- (3) In section 103 (notice by applicant of intention to proceed), in subsection (4) at the end of paragraph (d) the word “and” shall be omitted and at the end of paragraph (e) there shall be added “and
  - (f) if there is a disposal cost attributable to that property and the landlord has notified the applicant as mentioned in section 99(7) above of his intention to pay the disposal cost by instalments, either a statement of the basis on which, in accordance with regulations under section 104(2A) below, the disposal cost is to be paid by instalments

or a statement that the disposal cost is not such that those regulations permit it to be paid by instalments”.

- (4) In section 104 (duty to complete and consequences of completion) after subsection (2) there shall be inserted the following subsection—

“(2A) In such cases as may be prescribed and where the applicant has been notified as mentioned in section 99(7) above, a disposal cost may be paid by instalments of such amounts (which may include interest) and payable at such times and over such period as may be prescribed.”

## **175 Repeal of the Town Development Act 1952**

No undertaking shall be given under section 2 or 4 of the Town Development Act 1952 (Government and local authority contributions for the purposes of town development), and no payment shall be made in pursuance of any such undertaking, at any time after 31st March 1990; and that Act shall cease to have effect except for the purposes of any town development (within the meaning of that Act) in relation to which any undertaking has been given before that date under section 2 of that Act.

## **176 Amendment of definition of occupation for purposes of purchase of house by secure tenant: Scotland**

- (1) In section 61(10) of the Housing (Scotland) Act 1987 (definition of occupation of house for purposes of purchase by secure tenant)—

- (a) in paragraph (a)(v) (occupation by member of tenant’s family succeeding to tenancy may be treated, at discretion of landlord, as occupation for purposes of right to buy) the words “in the discretion of the landlord” shall be omitted; and
- (b) in paragraph (b) (rules for determining period of occupation) there shall be added at the end— “and

- (iii) there shall be added to the period of occupation of a house by a joint tenant any earlier period during which he was at least 16 years of age and occupied the house as a member of the family of the tenant or of one or more of the joint tenants of the house.”.

- (2) This section does not apply in any case where the application to purchase the house under section 63(2) of that Act has been served before the coming into force of this section.

## **177 Sale to secure tenants of houses provided for persons of pensionable age: Scotland**

In section 69 of the Housing (Scotland) Act 1987 (Secretary of State’s power to authorise refusal to sell certain houses provided for persons of pensionable age) after subsection (1) there shall be inserted the following subsection—

“(1A) This section applies only to houses first let on a secure tenancy before 1st January 1990.”

**178 Application of secure tenant’s right to buy to cases where landlord is lessee:  
Scotland**

- (1) In section 76 of the Housing (Scotland) Act 1987 (duty of landlords to provide information to secure tenants)—
- (a) in subsection (1)(a)—
    - (i) for the word “not” there shall be substituted the word “neither”; and
    - (ii) after the word “house” there shall be inserted the words “nor holds the interest of the landlord under a registered lease of the house or of land which includes it”;
  - (b) in subsection (2) for the words “heritable proprietor of the house” there shall be substituted the words “either the heritable proprietor of the house or the holder of the interest of the landlord under a registered lease of the house or of land which includes it”; and
  - (c) in subsection (3)(b) at the end there shall be inserted the words “or a local authority is the holder of the interest of the landlord under a registered lease of the house or of land which includes it.”
- (2) After section 84 of that Act there shall be inserted the following section—

**“84A Application of right to buy to cases where landlord is lessee**

- (1) Sections 61 to 84 (but not 76 or 77) and 216 (the “right to buy” provisions) shall, with the modifications set out in this section, apply so as to provide for—
- (a) the acquisition by the tenant of a house let on a secure tenancy of the landlord’s interest in the house as lessee under a registered lease of the house or of land which includes it or as assignee of that interest; and
  - (b) the obtaining of a loan by the tenant in that connection,
- as these sections apply for the purposes of the purchase of a house by the tenant from the landlord as heritable proprietor of it and the obtaining by the tenant of a loan in that connection.
- (2) References in the right to buy provisions to the purchase or sale of a house shall be construed respectively as references to the acquisition or disposal of the landlord’s interest in the house by way of a registered assignation of that interest and cognate expressions shall be construed accordingly.
- (3) The reference in section 61(2)(b) to the landlord’s being the heritable proprietor of the house shall be construed as a reference to the landlord’s being the holder of the interest of the lessee under a registered lease of the house or of land which includes it.
- (4) References in the right to buy provisions to the market value of or price to be paid for a house shall be construed respectively as references to the market value of the landlord’s interest in the house and to the price to be paid for acquiring that interest.
- (5) References in section 64(1) to the tenant’s enjoyment and use of a house as owner shall be construed as references to his enjoyment and use of it as assignee of the landlord’s interest in the house.
- (6) The reference in subsection (4) of section 64 to an option being offered to the landlord or to any other person to purchase the house in advance of its sale to a third party shall be construed as a reference to an option being offered to



have the interest acquired by the tenant re-assigned to the landlord or assigned to the other person in advance of its being disposed of to a third party; and the references in subsection (5) and (9) of that section to an option to purchase shall be construed accordingly.

(7) In this section and section 76—

“registered lease” means a lease—

- (a) which is recorded in the general register of sasines; or
- (b) in respect of which the interest of the lessee is registered in the Land Register of Scotland

under the Registration of Leases (Scotland) Act 1857; and

“registered assignation” means, in relation to such a lease, an assignation thereof which is so recorded or in respect of which the interest of the assignee has been so registered.”

## **179 Amendment of powers of Scottish Homes to dispose of land**

(1) In section 2 of the Housing (Scotland) Act 1988 (which, amongst other things, enables Scottish Homes to dispose of land)—

(a) in subsection (2) (powers of Scottish Homes), after “(3)” there shall be inserted “and (3A)”;

(b) in subsection (3)(b)—

(i) after “above” there shall be inserted the words “, other than the power under paragraph (h) to dispose of land,”; and

(ii) for the word “with” where secondly occurring there shall be substituted the words “between it and”;

(c) after subsection (3) there shall be inserted the following subsection—

“(3A) The power conferred by subsection (2)(h) above upon Scottish Homes to dispose of land may be exercised only with the consent of the Secretary of State (which consent may be given in relation to particular cases or classes of case and may be made subject to conditions).”; and

(d) subsection (6) (certain land not to be disposed of, without consent, for less than best price) shall be omitted.

## **180 Race relations: codes of practice in housing field**

The amendments of section 47 of the Race Relations Act 1976 (codes of practice) made by subsections (2) and (3) of section 137 of the Housing Act 1988 (codes of practice in the field of rented housing) shall be varied as follows—

(a) in subsection (1)(c) of the said section 47 the words following “field of housing” shall be omitted; and

(b) the word “rented”, where it occurs in subsections (1)(d) and (3A) of that section, shall be omitted.

**181 Duty of landlord to inform secure tenant seeking to buy house about changes in law: Scotland**

In section 76 of the Housing (Scotland) Act 1987 (duty of landlords to provide information to secure tenants) there shall be added at the end the following subsections—

“(4) Where—

- (a) by way of any enactment (including an enactment made under this Act), any change is to be made in the law relating to the calculation of the price at which the tenant of a house is entitled under this Act to purchase it, being a change which does not come into force upon the passing or making of that enactment but which, when it does come into force will affect the price of the house, and
- (b) the house is one in respect of which an application to purchase has, in the period ending with the coming into force of the change, been served under section 63(1) and not withdrawn but no contract of sale of the house has been constituted under section 66(2),

the landlord shall, upon the passing or making of that enactment or, if later, upon the service of the application to purchase, forthwith give written notice to the tenant stating the nature of the change and how it will affect the price and suggesting that the tenant should seek appropriate advice.

- (5) For the purposes of subsection (4), a change in the law will affect the price of a house if, on the day it falls to be calculated under the law as changed, the price will be different from what it would have been that day had there been no such change.”

*Other provisions***182 Power to monitor activities of registered housing associations**

In Part I of the Housing Associations Act 1985 (regulation of housing associations) after section 27 there shall be inserted the following section—

**“27A Power of Corporation to monitor associations**

- (1) If at any time required to do so by the Corporation,—
  - (a) a registered housing association shall produce to a person authorised in that behalf by the Corporation such books, accounts and other documents relating to the association’s business as may be specified by the Corporation; and
  - (b) any officer, employee or member of the committee of the registered housing association shall provide an explanation of any such books, accounts and other documents.
- (2) Where, by virtue of subsection (1), any books, accounts or other documents are produced to a person authorised in that behalf by the Corporation, he may take copies of or make extracts from them.
- (3) In the application of this section to a registered housing association which is a charity,—

- (a) the reference in subsection (1)(a) to the association's business shall be construed as a reference to its housing activities; and
- (b) the reference to a member of the committee includes a reference to a trustee of the association."

**183 Extension of powers of Housing Corporation and Housing for Wales to give financial assistance**

For section 87 of the Housing Associations Act 1985 (grants towards expenses in promoting or assisting registered housing associations) there shall be substituted the following section—

**"87 Financial assistance with respect to formation, management, etc. of certain housing associations**

- (1) The Corporation may give financial assistance to any person in respect of the following activities—
  - (a) promoting and giving advice on the formation of registered housing associations and co-operative housing associations (in this section referred to collectively as "relevant associations");
  - (b) managing, providing services for, and giving advice on the running of, relevant associations; and
  - (c) assisting tenants and licensees of a relevant association to take part in the management of the association or of some or all of the dwellings provided by the association.
- (2) Assistance under this section may be in the form of grants, loans, guarantees or incurring expenditure for the benefit of the person assisted or in such other way as the Corporation considers appropriate, except that the Corporation may not, in giving any form of financial assistance, purchase loan or share capital in a company.
- (3) With respect to financial assistance under this section, the following—
  - (a) the procedure to be followed in relation to applications for assistance,
  - (b) the circumstances in which assistance is or is not to be given,
  - (c) the method for calculating, and any limitations on, the amount of assistance, and
  - (d) the manner in which, and the time or times at which, assistance is to be given,shall be such as may be specified by the Corporation, acting in accordance with such principles as it may from time to time determine.
- (4) In giving assistance under this section, the Corporation may provide that the assistance is conditional upon compliance by the person to whom the assistance is given with such conditions as it may specify.
- (5) Where assistance under this section is given in the form of a grant, subsections (1), (2) and (7) to (9) of section 52 of the Housing Act 1988 (recovery, etc. of grants) shall apply as they apply in relation to a grant to which that section applies, but with the substitution, for any reference in those subsections to the registered housing association to which the grant has been given, of a reference to the person to whom assistance is given under this section.

- (6) Section 53 of the Housing Act 1988 (determinations under Part II) shall apply in relation to a determination under this section as it applies to a determination under sections 50 to 52 of that Act.”

#### **184 Extension of functions of Audit Commission**

- (1) In Part III of the Local Government Finance Act 1982 (the Audit Commission for Local Authorities in England and Wales) after section 28 there shall be inserted the following section—

##### **“28A Functions of Commission in relation to national health service**

- (1) At the request of the Secretary of State, the Commission may—
- (a) promote or undertake studies designed to improve economy, efficiency and effectiveness in the management or operations of any of the bodies specified in section 98(1) of the National Health Service Act 1977 (accounts to be kept by Health Authorities, Family Practitioner Committees, special trustees and the Dental Practice Board);
  - (b) appoint an auditor to audit the accounts of any of those bodies for a financial year;
  - (c) make available officers of the Commission to assist with the studies referred to in paragraph (a) above;
  - (d) make available officers of the Commission to assist an auditor appointed by the Commission under paragraph (b) above or by the Secretary of State under the said section 98(1) in carrying out his audit of any of those bodies;
  - (e) provide advice to the Secretary of State on any proposal to transfer responsibility for the audit of the accounts of any of those bodies to the Commission; and
  - (f) provide training for persons in relation to the audit of the accounts of those bodies, including training for securing economy, efficiency and effectiveness in the provision of services by those bodies.
- (2) Where a request is made to the Commission to appoint an auditor as mentioned in subsection (1)(b) above, section 13 above shall apply as it applies in relation to the appointment of an auditor to audit the accounts of any body whose accounts are required to be audited in accordance with this Part of this Act subject to the following modifications—
- (a) subsections (3) and (4) shall be omitted; and
  - (b) in subsection (5) for the words “has such other qualifications as may be” there shall be substituted the words “is a person for the time being”.
- (3) Subject to subsection (2) above, references in the foregoing provisions of this Part of this Act to an audit carried out thereunder do not include an audit carried out pursuant to a request under subsection (1) above.
- (4) Where any services are to be provided pursuant to a request under subsection (1) above, the Commission shall agree with the Secretary of State, and charge him, such fees as will cover the full cost of providing the services.”

- (2) In section 29 of that Act (miscellaneous functions of Commission) in subsection (1)—
- (a) in paragraph (a) after the words “Minister of the Crown” there shall be inserted “or public authority”;
  - (b) at the end of paragraph (c) there shall be inserted the words “or
    - (d) for certifying any return by the body which, by or under any enactment, is required or authorised to be certified by the body’s auditor or under arrangements made by the Commission”;and
  - (c) at the end there shall be added the words “and in paragraph (a) above “public authority” means a body established by or under the Treaties or by or under any enactment”.
- (3) In section 98(1) of the National Health Service Act 1977 after the words “audited by auditors appointed by the Secretary of State” there shall be inserted “or by the Audit Commission for Local Authorities in England and Wales at his request”.

## **185 Publication of reports of Controller of Audit: Scotland**

In section 102 of the Local Government (Scotland) Act 1973 (reports to Commission for Local Authority Accounts by Controller of Audit)—

- (a) in subsections (1) and (2) there shall, in each case, be added at the end the words “and may send a copy of any report so made to any other person he thinks fit”; and
- (b) after subsection (2) there shall be inserted the following subsection—

“(2A) A local authority shall, forthwith upon their receiving a copy of a report sent to them under subsection (1) or (2) above, supply a copy of that copy report to each member of the authority and make additional copies available for public inspection.”

## **186 Security of tenure on ending of long residential tenancies**

- (1) Schedule 10 to this Act shall have effect (in place of Part I of the Landlord and Tenant Act 1954) to confer security of tenure on certain tenants under long tenancies and, in particular, to establish assured periodic tenancies when such long tenancies come to an end.
- (2) Schedule 10 to this Act applies, and section 1 of the Landlord and Tenant Act 1954 does not apply, to a tenancy of a dwelling-house—
- (a) which is a long tenancy at a low rent, as defined in Schedule 10 to this Act; and
  - (b) which is entered into on or after the day appointed for the coming into force of this section, otherwise than in pursuance of a contract made before that day.
- (3) If a tenancy—
- (a) is in existence on 15th January 1999, and
  - (b) does not fall within subsection (2) above, and
  - (c) immediately before that date was, or was deemed to be, a long tenancy at a low rent for the purposes of Part I of the Landlord and Tenant Act 1954,
- then, on and after that date (and so far as concerns any notice specifying a date of termination on or after that date and any steps taken in consequence thereof), section 1 of that Act shall cease to apply to it and Schedule 10 to this Act shall apply to it unless,

before that date, the landlord has served a notice under section 4 of that Act specifying a date of termination which is earlier than that date.

- (4) The provisions of Schedule 10 to this Act have effect notwithstanding any agreement to the contrary, but nothing in this subsection or that Schedule shall be construed as preventing the surrender of a tenancy.
- (5) Section 18 of the Landlord and Tenant Act 1954 (duty of tenants of residential property to give information to landlords or superior landlords) shall apply in relation to property comprised in a long tenancy at a low rent, within the meaning of Schedule 10 to this Act, as it applies to property comprised in a long tenancy at a low rent within the meaning of Part I of that Act, except that the reference in that section to subsection (1) of section 3 of that Act shall be construed as a reference to sub-paragraph (1) of paragraph 3 of Schedule 10 to this Act.
- (6) Where, by virtue of subsection (3) above, Schedule 10 to this Act applies to a tenancy which is not a long tenancy at a low rent as defined in that Schedule, it shall be deemed to be such a tenancy for the purposes of that Schedule.

## **187 Construction industry: grants and guarantees**

- (1) The Secretary of State may, for the purpose of promoting or facilitating the carrying on of any of the activities specified in subsection (2) below, do one or both of the following, that is to say—
  - (a) make grants to any person who carries on any such activities;
  - (b) guarantee the repayment of the principal of, the payment of interest on and the discharge of any other financial obligation in connection with sums borrowed temporarily by any such person.
- (2) The activities mentioned in subsection (1) above are—
  - (a) the assessment of, and of applications of, materials, products, systems and techniques used or proposed for use in the construction industry; and
  - (b) the issue of certificates, promotion of common standards and publication of information with respect to any such materials, products, systems or techniques.
- (3) The consent of the Treasury shall be required for the exercise by the Secretary of State of his power under this section to make a grant or give a guarantee; but, subject to that consent and to the following provisions of this section, that power shall be a power to make a grant or give a guarantee in such manner and on such conditions as he thinks fit.
- (4) Immediately after a guarantee is given under this section, the Secretary of State shall lay a statement of the guarantee before each House of Parliament.
- (5) Where any sums are paid out in fulfilment of a guarantee given under this section in respect of any person's borrowing, that person shall make to the Secretary of State, at such times and in such manner as the Secretary of State may, with the consent of the Treasury, from time to time direct—
  - (a) payments, of such amounts as the Secretary of State may so direct, in or towards repayment of those sums; and
  - (b) payments of interest, at such rate as the Secretary of State may so direct, on what is outstanding for the time being in respect of those sums.
- (6) As soon as possible after the end of any financial year in which—

- (a) any sums are paid out in fulfilment of a guarantee given under this section, or
- (b) any liability in respect of the principal of sums so paid out, or in respect of interest on any such sums, is outstanding,

the Secretary of State shall lay before each House of Parliament a statement relating to the sums.

## **188 Repeal of s. 2 of the Education (Grants and Awards) Act 1984**

Section 2 of the Education (Grants and Awards) Act 1984 (limit on expenditure approved for grant purposes) shall not apply in relation to any expenditure approved for the financial year beginning with 1st April 1990 or any subsequent financial year.

## **189 Grants by Secretary of State towards costs of magistrates' courts etc**

- (1) Section 59 of the Justices of the Peace Act 1979 (grants by Secretary of State to responsible authorities) shall be amended in accordance with this section.
- (2) In subsection (1), in paragraph (a) the words “or this Part” shall be omitted and at the end of the subsection there shall be added “and
  - (c) of their functions under this Part of this Act or, in the case of the Receiver, his corresponding functions”.
- (3) In subsection (3) after the word “section” there shall be inserted “towards the net cost to a responsible authority in any year of the matters mentioned in paragraphs (a) and (b) of subsection (1) above” and for the words from “the expenditure” onwards there shall be substituted “that net cost”.
- (4) After subsection (4) there shall be inserted the following subsection—
  - “(4A) In determining the amount of the grant towards the net cost of the functions referred to in subsection (1)(c) above, the Secretary of State may disregard, in whole or in part, such items of expenditure as he thinks fit.”

### *Supplementary*

## **190 Regulations**

- (1) Under any power to make regulations conferred by any provision of this Act, different provision may be made for different cases and different descriptions of cases (including different provision for different areas).
- (2) Any power to make regulations conferred by any provision of this Act shall be exercisable by statutory instrument which, except in the case of a statutory instrument containing regulations under section 150 or section 151 or Schedule 10, shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## **191 Separate provisions for Wales**

- (1) Where any provision of this Act which extends to England and Wales confers (directly or by amendment of another Act) a power on the Secretary of State to make regulations, orders, rules or determinations or to give directions or specify any matter, the power may be exercised differently for England and Wales, whether or not it is exercised separately.

- (2) This section is without prejudice to section 190(1) above and to any other provision of this Act or of any Act amended by this Act by virtue of which powers may be exercised differently in different cases or in any other circumstances.

## **192 Financial provisions**

- (1) There shall be paid out of money provided by Parliament—
- (a) any sums required for the payment by the Secretary of State of grants, subsidies or contributions under this Act;
  - (b) any sums required by the Secretary of State for fulfilling any guarantees under this Act;
  - (c) any other expenses of the Secretary of State under this Act; and
  - (d) any increase attributable to this Act in the sums so payable under any other enactment.
- (2) Any sums received by the Secretary of State under this Act shall be paid into the Consolidated Fund.

## **193 Application to Isles of Scilly**

- (1) This Act applies to the Isles of Scilly subject to such exceptions, adaptations and modifications as the Secretary of State may by order direct.
- (2) The power to make an order under this section shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## **194 Amendments and repeals**

- (1) Schedule 11 to this Act, which contains minor amendments and amendments consequential on the provisions of this Act, shall have effect.
- (2) The enactments specified in Part I of Schedule 12 to this Act, which relate to or are superseded by the provisions of Part IV of this Act, are hereby repealed to the extent specified in the third column of that Schedule; and the Secretary of State may by order made by statutory instrument make provision (in consequence of the said Part IV) amending, repealing or revoking (with or without savings) any provision of an Act passed before or in the same session as this Act, or of an instrument made under an Act before the passing of this Act.
- (3) In subsection (2) above “Act” includes a private or local Act and a statutory instrument by which the power in that subsection is exercised shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) The other enactments specified in Part II of Schedule 12 to this Act, which include some that are spent, are hereby repealed to the extent specified in the third column of that Schedule, but subject to any provision at the end of that Schedule.

## **195 Short title, commencement and extent**

- (1) This Act may be cited as the Local Government and Housing Act 1989.



- (2) The provisions of sections 1 and 2, 9, 10, 13 to 20 above, Parts II to V (with the exception in Part II of section 24), VII and VIII and (in this Part) sections 140 to 145, 156, 159, 160, 162, 164, 165, 167 to 173, 175 to 180, 182 and 183, 185, 186 and 194, except in so far as it relates to paragraphs 104 to 106 of Schedule 11, shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint, and different days may be so appointed for different provisions or for different purposes.
- (3) An order under subsection (2) above may contain such transitional provisions and savings (whether or not involving the modification of any statutory provision) as appear to the Secretary of State necessary or expedient in connection with the provisions brought into force by the order.
- (4) Subject to subsection (5) below, this Act, except Parts I and II and sections 36(9), 140 to 145, 150 to 152, 153, 155, 157, 159, 161, 166, 168, 170, 171, 176 to 182, 185, 190, 192, 194(1), 194(4) and this section, extends to England and Wales only.
- (5) Notwithstanding anything in subsection (4) above, any provision of Schedule 11 or Part II of Schedule 12 to this Act which amends or repeals any provision of the following enactments does not extend to Scotland—
  - (a) the Military Lands Act 1892;
  - (b) the Local Authorities (Expenditure Powers) Act 1983.
- (6) This Act does not extend to Northern Ireland.