



# Local Government Act 1988

## 1988 CHAPTER 9

### PART I

#### COMPETITION

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

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

#### *Preliminary*

### **1 Defined authorities.**

- (1) For the purposes of this Part each of the following is a defined authority—
- (a) a local authority,
  - (b) an urban development corporation established by an order under section 135 of the <sup>M1</sup>Local Government, Planning and Land Act 1980,
  - (c) a development corporation established for the purposes of a new town,
  - (d) the Commission for the New Towns,
  - (e) a police authority constituted under section 2 of the <sup>M2</sup>Police Act 1964 or as mentioned in section 3(1) of that Act, or established by section 24 or 25 of the <sup>M3</sup>Local Government Act 1985,
  - (f) a fire authority constituted by a combination scheme and a metropolitan county fire and civil defence authority,

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- (g) the London Fire and Civil Defence Authority,
  - (h) a metropolitan county passenger transport authority,
  - (i) an authority established by an order under section 10(1) of the Local Government Act 1985 (waste disposal),
  - (j) a joint education committee established by an order under paragraph 3 of Part II of Schedule 1 to the <sup>M4</sup>Education Act 1944 . . . <sup>F1</sup>, [<sup>F2</sup>and]
  - (k) a water development board in Scotland, . . . <sup>F3</sup>
  - (l) . . . . . <sup>F3</sup>
- (2) In the application of this Part to England and Wales, “local authority” in subsection (1) above means—
- (a) a county council, a district council, a London borough council, a parish council, a community council or the Council of the Isles of Scilly;
  - (b) the Common Council of the City of London in its capacity as local authority or police authority.
- (3) In the application of this Part to Scotland, in subsection (1) above—
- (a) “local authority” means a regional, islands or district council or any joint board or joint committee within the meaning of the <sup>M5</sup>Local Government (Scotland) Act 1973, and
  - (b) “water development board” has the same meaning as in section 109(1) of the <sup>M6</sup>Water (Scotland) Act 1980.
- (4) In a case where two or more defined authorities arrange under section 101 of the <sup>M7</sup>Local Government Act 1972 for the discharge by a joint committee of theirs of any of their functions, the committee shall itself be treated as a defined authority for the purposes of this Part in its application to England and Wales.

#### Textual Amendments

- F1** Words repealed by [Education Reform Act 1988 \(c. 40, SIF 41:1\)](#), ss. 231(7), 235(6), 237(2), **Sch. 13 Pt. 1**
- F2** Word inserted by [Housing \(Scotland\) Act 1988 \(c. 43, SIF 61\)](#), ss. 1, 3, **Sch. 2 para. 16(a)**
- F3** [S. 1\(1\)\(l\)](#) and word immediately preceding it repealed by [Housing \(Scotland\) Act 1988 \(c.43, SIF 61\)](#), ss. 1, 3(1)(3), 72(3), **Sch. 2 para. 16(b)**, **Sch. 10**

#### Marginal Citations

- M1** 1980 c. 65.
- M2** 1964 c. 48.
- M3** 1985 c. 51.
- M4** 1944 c. 31.
- M5** 1973 c. 65.
- M6** 1980 c. 45.
- M7** 1972 c. 70.

## 2 Defined activities.

- (1) This section applies for the purposes of this Part.
- (2) Each of the following is a defined activity—
- (a) collection of refuse,

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- (b) cleaning of buildings,
- (c) other cleaning,
- (d) catering for purposes of schools and welfare,
- (e) other catering,
- [<sup>F4</sup>(ee) managing sports and leisure facilities;]
- (f) maintenance of ground, and
- (g) repair and maintenance of vehicles;

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

- (3) The Secretary of State may by order provide for an activity to be a defined activity by adding a paragraph to those for the time being appearing in subsection (2) above.
- (4) Before making an order under subsection (3) above, the Secretary of State shall consult such representatives of local government as appear to him to be appropriate.
- (5) Where work would (apart from this subsection) fall within more than one defined activity it shall be treated as falling only within such one of them as the authority carrying out the work decide.
- (6) Work which is carried out by a defined authority through an employee and which would (apart from this subsection) fall within a defined activity shall not do so if it is incidental to the greater part of the work he is employed to do and the greater part does not constitute a defined activity.
- (7) If a defined authority carry out work which (apart from this subsection) would not fall within a defined activity, and which in their opinion cannot be carried out efficiently separately from a particular defined activity, the work shall (if they so decide) be treated as falling within that defined activity.
- (8) Work which would (apart from this subsection) fall within a defined activity shall not do so if it is calculated to avert, alleviate or eradicate the effects or potential effects of an emergency or disaster (actual or potential) involving or likely to involve danger to life or health or serious damage to or destruction of property.
- (9) The Secretary of State may provide by order that any activity specified in the order, if carried out by a defined authority or authorities so specified, shall not be treated as a defined activity so long as conditions so specified are fulfilled.

#### **Subordinate Legislation Made**

- P1** S. 2 for exercises of this power see Index to Government Orders
- P2** S. 2(9)(with s. 15(5)) power exercised by S.I. 1991/262
- P3** S. 2(9) (with s. 15(5)) power exercised by S.I. 1991/312

#### **Textual Amendments**

- F4** S. 2(2)(ee) inserted by S.I. 1989/2488, art. 2(1)

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

- C5** S. 2(2) modified (E.W.) by S.I. 1988/1372, arts. 3–6
- C6** S. 2(2) modified (S.) by S.I. 1988/1415, arts. 3–6
- C7** S. 2(2) excluded (E.W.) by S.I. 1988/1469, arts. 3, 4, 6
- C8** S. 2(2)(b)(d) restricted by S.I. 1990/403, art. 3

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- C9** S. 2(2)(c) excluded (15.3.1991) by S.I. 1991/262, **art. 3**  
 S. 2(2)(c) excluded (22.2.1991) by S.I. 1991/312, **art. 3**
- C10** S. 2(2)(g) restricted by S.I. 1990/403, **art. 3**

### 3 Other definitions.

- (1) This section applies for the purposes of this Part.
- (2) “Works contract” means a contract constituting or including an agreement which provides for the carrying out of work by a defined authority.
- (3) But a contract is not a works contract if it constitutes or includes an agreement providing for a defined authority to discharge the functions of a Minister of the Crown, another defined authority or (in the application of this Part to England and Wales) a [<sup>F5</sup>sewerage undertaker].
- (4) “Functional work” means—
  - (a) work carried out by a defined authority, other than work carried out under a works contract; and
  - (b) work which is carried out otherwise than by a defined authority but which is dependent upon, or incidental or preparatory to, other work which, by virtue of paragraph (a) above, is functional work in relation to that authority;
 and work carried out as mentioned in paragraph (b) above shall be treated as carried out by the defined authority.
- (5) “Financial year” means a period of 12 months beginning with 1st April.

#### Textual Amendments

- F5** Words substituted by [Water Act 1989 \(c. 15, SIF 130\)](#), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), Sch. 25 para. 79(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), **58**

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

- C11** S. 3(3) modified by [S.I. 1988/1373](#), **reg. 3**
- C12** S. 3(4) applied (with modifications) (10.11.1994) by [S.I. 1994/2884](#), **art. 3(2)**  
 S. 3(4) applied (with modifications) (11.11.1994) by [S.I. 1994/2888](#), **art. 3(2)**  
 S. 3(4) applied (with modifications) (20.7.1995) by [S.I. 1995/1915](#), **art. 5(2)**

#### *Works contracts: restrictions*

### 4 Works contracts: restrictions. **E+W**

- (1) If a defined authority (a bidding authority) propose to enter into a works contract with another person (the other party) and under the contract the bidding authority are to carry out work falling within a defined activity, the bidding authority may not enter into the contract unless—
  - (a) the first or second alternative of the first condition is fulfilled, and
  - (b) the second condition is fulfilled.
- (2) The first alternative of the first condition is that—

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

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

**C13** S. 4 modified by S.I. 1989/2488, art. 3

**C14** S. 4(1) modified (E.W.) by S.I. 1991/719, reg.6(3)(a)

**4 Works contracts: restrictions. S**

- (1) If a defined authority (a bidding authority) propose to enter into a works contract with another person (the other party) and under the contract the bidding authority are to carry out work falling within a defined activity, the bidding authority may not enter into the contract unless—
  - (a) the first or second alternative of the first condition is fulfilled, and
  - (b) the second condition is fulfilled.
- (2) The first alternative of the first condition is that—
  - (a) the contract is made by acceptance of the bidding authority's offer to carry out the work,
  - (b) the bidding authority made the offer in response to an invitation by the other party to submit such offers, and

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

#### **Extent Information**

**E1** This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

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

**C35** S. 4 modified by S.I. 1989/2488, art. 3

## **5 Works contracts: transitional.**

- (1) Where—
- (a) a defined authority (as a bidding authority) entered into a works contract before 1st April 1989 (and whether or not before the passing of this Act), and
- (b) had they entered into the contract on 1st April 1989 they would have infringed section 4 above,
- on that date the parties to the contract shall cease to have power to carry it out.
- (2) If the contract is governed by English law and the parties to it do not make other provision before 1st April 1989, the <sup>M8</sup>Law Reform (Frustrated Contracts) Act 1943 shall apply to the contract with effect from that date.

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

**C15** S. 5 modified by S.I. 1989/2488, art. 3

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- C16** S. 5 modified (20.7.1995) by S.I. 1995/1915, **art. 6**  
S. 5 modified (23.6.1994) by S.I. 1994/1671, **art. 4**  
S. 5 modified (10.11.1994) by 1994/2884, art. 4  
S. 5 modified (11.11.1994) by 1994/2888, art. 4

#### Marginal Citations

- M8** 1943 c. 40.

### *Functional work: restrictions*

## **6 Functional work: restrictions.**

- (1) A defined authority may not carry out functional work falling within a defined activity unless each of the six conditions is fulfilled.
- (2) The conditions mentioned in subsection (1) above are those set out in section 7 below, which shall have effect subject to section 8 below.
- (3) This section applies only if the work falls within such a defined activity, is of such a description, is proposed to be carried out by such defined authority or authorities, and is proposed to be carried out on or after such date (not preceding 1st April 1989), as the Secretary of State may by regulations specify.
- (4) The regulations may provide that where a defined authority propose to carry out functional work which falls within a defined activity specified in the regulations (whether or not by virtue of section 2(5) or (7) above) and to which this section would not otherwise apply, it shall (if the authority so decide) be treated as work to which this section applies.
- (5) This section applies even if the work forms part of work begun before any date specified in the regulations, but references in this section and the following provisions of this Part to the work do not include references to any work carried out before such date.

#### Subordinate Legislation Made

- P4** S. 6: for exercises of this power see Index to Government Orders.  
**P5** S. 6(3) (with ss. 8(10) and 15(6)) power exercised by S.I. 1991/232.

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

- C17** S. 6 applied by S.I. 1988/1371, **reg. 6**  
S. 6 applied (S.) by S.I. 1990/1484, **reg. 3(1)(3)**  
**C18** S. 6 applied by S.I. 1990/1564, **reg. 2(1)**.  
**C19** S. 6 applied (13.3.1991) by S.I. 1991/232, **arts. 3(1)(2), 4(1)**.  
**C20** S. 6 excluded (temp.) (1.4.1991) by S.I. 1991/719, **reg.4(3)(7)(10)**  
s. 6 excluded (temp.) (1.4.1991) by S.I. 1991/719, **reg.5(2)(4)**  
**C21** S. 6 extended (1.4.1991) by S.I. 1991/719, **reg.4(4)(1)**  
S. 6 extended (1.4.1991) by S.I. 1991/719, **reg.5(5)**

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## 7 The conditions.

- (1) The first condition is that, before carrying out the work, the authority published, in at least one newspaper circulating in the locality in which the work is to be carried out and at least one publication circulating among persons who carry out work of the kind concerned, a notice containing the matters mentioned in subsection (2) below.
- (2) The matters are—
  - (a) a brief description of the work,
  - (b) a statement that during a period specified in the notice any person may inspect a detailed specification of the work free of charge at a place and time specified in the notice,
  - (c) a statement that during that period any person will be supplied with a copy of the detailed specification on request and on payment of such charge as is specified in the notice,
  - (d) a statement that any person who may wish to carry out the work should notify the authority of that fact within a period specified in the notice, and
  - (e) a statement that the authority intend to make, in accordance with the third condition, an invitation to carry out the work.
- (3) The second condition is that—
  - (a) the periods, place, time and charge specified in the notice are reasonable,
  - (b) before carrying out the work, the authority made a detailed specification of the work available for inspection, and copies of it available for supply, in accordance with the notice, and
  - (c) the detailed specification includes a statement of the period during which the work is to be carried out.
- (4) The third condition is that, if any person notified the authority in accordance with the statement under subsection (2)(d) above, the authority made an invitation to carry out the work in accordance with the following rules—
  - (a) the invitation was made by the authority before carrying out the work, and not less than 3 nor more than 6 months after complying with the first condition;
  - (b) if more than three persons who are not defined authorities notified the authority, at least three of them were invited;
  - (c) if less than four persons who are not defined authorities notified the authority, each of them was invited;
  - (d) if a defined authority or defined authorities notified the authority, such one or more (if any) of them as the authority decided was invited.
- (5) The Secretary of State may by regulations amend paragraphs (b) and (c) of subsection (4) above so as to vary the number of persons who are not defined authorities who must be invited to carry out work in particular circumstances.
- (6) The fourth condition is that before carrying out the work the authority, through their direct labour organisation or a similar organisation, prepared a written bid indicating their wish to carry out the work.
- (7) The fifth condition is that the authority, in reaching the decision that they should carry out the work and in doing anything else (whether or not required by this Part) in connection with the work before reaching the decision, did not act in a manner having the effect or intended or likely to have the effect of restricting, distorting or preventing competition.



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- (8) The sixth condition is that in carrying out the work the authority comply with the detailed specification of it mentioned in subsections (2) and (3) above.

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

- C22** S. 7 restricted (W.) (1.4.1996) by S.I. 1996/265, **reg. 3**
- C23** S. 7(2)(b)(d): power to modify conferred (4.1.1993) by Local Government Act 1992 (c. 19), **s. 9(3)(c)**; S.I. 1992/3241, **art.2**
- C24** S. 7(3) restricted (17.8.1995) by S.I. 1995/1973, **reg. 5**
- C25** S. 7(4) modified (11.11.1994) by S.I. 1994/2888, **art. 3(3)**  
S. 7(4) modified (20.7.1995) by S.I. 1995/1915, **art. 5(3)**
- C26** S. 7(4)(a) modified (10.11.1994) by S.I. 1994/2884, **art. 3(3)**
- C27** S. 7(8) applied (9.1.1995) by S.I. 1994/3167, **reg. 14(5)(a)**

**8 The conditions: further provisions.**

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

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- (4) If the Secretary of State so provides by regulations, the fourth condition shall not be treated as fulfilled unless before carrying out the work the authority complied with requirements prescribed by the regulations as to the bid (which may include requirements about the preparation, keeping or opening of the bid, or otherwise).
- (5) If the Secretary of State so provides by regulations, the fifth condition shall not be treated as fulfilled unless—
- (a) in accordance with prescribed requirements there is prepared and certified a document which appraises and fulfils such other conditions as may be prescribed with respect to responses falling within subsection (2) above and the bid referred to in subsection (3) above; and
  - (b) at such time or times (prior to reaching the decision referred to in section 7(7) above) as may be prescribed, copies of that document are provided or made available in accordance with any prescribed requirements;
- and “prescribed” here means prescribed by the regulations.
- (6) Where any document is provided or made available in accordance with the requirements of regulations under subsection (5) above, the publication thereby of any defamatory matter in the document shall be privileged unless the publication is proved to be made with malice.

#### **Subordinate Legislation Made**

**P6** S. 8: for exercises of this power see Index to Government Orders.

**P7** S. 6(3) (with ss. 8(1) and 15(6)) power exercised by [S.I.1991/232](#).

### *Accounts, reports and information*

#### **9 Accounts to be kept.**

- (1) This section applies where a defined authority carry out, in the financial year beginning in 1989 or in a subsequent financial year, work which falls within a defined activity and fulfils the condition that—
- (a) it is carried out under a works contract to which section 4 above applies, or
  - (b) section 6 above applies to it.
- (2) For each financial year in which the work is carried out, the authority shall keep an account as regards all work which falls within that activity, is carried out by them in that year and fulfils that condition.
- (3) Where any work falling within the activity is carried out under a works contract, the authority shall credit to the account kept under this section as regards the activity for the financial year in which the work is carried out such an amount as is specified in the contract, or ascertained under it, as the price for carrying out the work in that year.
- (4) Where any work falling within the activity is functional work, the authority shall enter, in the account kept under this section as regards the activity for the financial year in which the work is carried out, such item as is necessary to carry out any intention expressed by the authority in relation to the work in any bid prepared under section 7(6) above.
- (5) The Secretary of State may specify—

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- (a) items which are to be entered in accounts kept under this section (in addition to items to be entered by virtue of subsections (3) and (4) above), and
  - (b) the method of determining the amount of any item to be entered by virtue of the specification.
- (6) No item may be credited to an account kept under this section except an item required to be credited by subsection (3) or (4) above or by virtue of a specification under subsection (5) above.
- (7) Where an authority is required under this section to keep an account of work falling within a defined activity, nothing in section 2(2) of the <sup>M9</sup>Local Authorities (Goods and Services) Act 1970 shall be taken to require the authority to keep a separate account in respect of any agreement for the carrying out of that work.

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

- C28** S. 9 applied (9.1.1995) by S.I. 1994/3167, **reg. 13**  
S. 9 applied (with modification) (15.8.1994) by 1994 c. 19, s. 52 (with ss. 54(5)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1994/2109, **art. 2**
- C29** S. 9(4) applied (9.1.1995) by S.I. 1994/3167, **reg. 14(5)(b)**

**Marginal Citations**

- M9** 1970 c. 39.

**10 Financial objectives to be met.**

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

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

- C30** S. 10 applied (9.1.1995) by S.I. 1994/3167, **reg. 13**  
S. 10 applied (with modification) (15.8.1994) by 1994 c. 19, s. 52 (with ss. 54(5)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1994/2109, **art. 2**

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## **11 Report for financial year.**

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

*Status: Point in time view as at 01/04/1991.*

*Changes to legislation: There are currently no known outstanding effects for the Local Government Act 1988, Part I. (See end of Document for details)*

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

- C31** S. 11 applied (9.1.1995) by S.I. 1994/3167, **reg. 13**  
S. 11 applied (with modification) (15.8.1994) by 1994 c. 19, s. 52 (with ss. 54(5)(7), 55(5), Sch. 17 para. 22(1), 23(2)); S.I. 1994/2109, **art. 2**
- C32** S. 11(7) excluded (9.1.1995) by S.I. 1994/3167, **reg. 16(2)**

**12 Information.**

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

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

- C33** S. 12 applied (9.1.1995) by S.I. 1994/3167, **reg. 13**  
S. 12 applied (with modification) (15.8.1994) by 1994 c. 19, s. 52 (with ss. 54(5)(7), 55(5), Sch. 17 para. 22(1), 23(2)); S.I. 1994/2109, **art. 2**

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### *Sanctions*

#### **13 Notice for purpose of getting information.**

(1) If it appears to the Secretary of State that in the financial year beginning in 1989 or in a subsequent financial year a defined authority—

- (a) have (as a bidding authority) entered into a contract to carry out work and have done so in contravention of section 4 above,
- (b) have carried out work in circumstances where any of the six conditions required to be fulfilled as regards the work by section 6 above has not been fulfilled,
- (c) have carried out work in circumstances where section 9 above has not been complied with for the year concerned in relation to the defined activity within which the work falls or in relation to an account required by that section to be kept for the year concerned as regards the activity,
- (d) have carried out work in circumstances where section 10 above has not been complied with for the year concerned in relation to the defined activity within which the work falls, or
- (e) have carried out work in circumstances where section 11 above has not been complied with for the year concerned in relation to the defined activity within which the work falls or in relation to a report required by that section to be prepared for the year concerned as regards the activity,

he may serve on the authority a written notice falling within subsection (2) below.

(2) The notice is one which—

- (a) informs the authority that it appears to him that in a financial year identified in the notice they have acted as mentioned in one of the paragraphs (so identified) of subsection (1) above,
- (b) identifies the work concerned and states why it so appears, and
- (c) contains the requirement mentioned in subsection (3) below.

(3) The requirement is that the authority submit to him within such time as is specified in the notice a written response which—

- (a) states that they have not acted as mentioned in the paragraph concerned of subsection (1) above and justifies the statement, or
- (b) states that they have acted as so mentioned and gives reasons why he should not give a direction under section 14 below.

(4) Where work is specified under section 6(3) above as a proportion of particular work, the reference in subsection (2)(b) above to work is to the work of which the proportion forms a part.

(5) The Secretary of State may serve on an authority different notices under this section identifying the same financial year and the same work, whether they identify the same paragraph or different paragraphs of subsection (1) above.

#### **14 Power to give directions.**

(1) Subsection (2) below applies where—

- (a) the Secretary of State has served a notice on an authority under section 13 above,

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- (b) the time specified in the notice has expired (whether or not he has received a written response to the notice), and
  - (c) it still appears to him that the authority have acted as mentioned in the paragraph concerned of section 13(1) above.
- (2) The Secretary of State may direct that with effect from such date as is specified in the direction the authority—
  - (a) shall cease to have power to carry out any work falling within the appropriate activity,
  - (b) shall cease to have power to carry out such work falling within that activity as is identified in the direction,
  - (c) shall only have power to carry out work falling within that activity if such conditions as are specified in the direction are fulfilled, or
  - (d) shall, as regards such work falling within that activity as is identified in the direction, only have power to carry it out if such conditions as are specified in the direction are fulfilled.
- (3) Where the Secretary of State has given a direction under subsection (2) above or this subsection (the previous direction) he may give a direction (a new direction) that with effect from such date as is specified in the new direction—
  - (a) any prohibition applying by virtue of the previous direction (whether the prohibition applies outright or if conditions are not fulfilled) shall cease to apply,
  - (b) any outright prohibition applying by virtue of the previous direction is replaced by a prohibition applying (as regards the same work) if conditions specified in the new direction are not fulfilled, or
  - (c) any prohibition applying as regards work by virtue of the previous direction (whether the prohibition applies outright or if conditions are not fulfilled) is replaced by a prohibition which applies only to such of that work as is identified in the new direction but which is otherwise in the same terms as the prohibition in the previous direction.
- (4) If the Secretary of State directs under this section that an authority shall cease to have power to carry out work, or shall only have power to carry out work if certain conditions are fulfilled, the direction shall have effect notwithstanding any enactment by virtue of which they are required or authorised to do the work or (as the case may be) to do it without the need for the conditions to be fulfilled.
- (5) In this section “the appropriate activity” means the defined activity within which the work identified in the notice concerned falls.

#### *Miscellaneous*

### **15 Orders, regulations, specifications and directions.**

- (1) The power to make an order under section 2(3) above shall be exercisable by statutory instrument, and no such order shall be made unless a draft of the order has been laid before and approved by resolution of each House of Parliament.
- (2) The power to make an order under section 2(9) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

*Status: Point in time view as at 01/04/1991.*

*Changes to legislation: There are currently no known outstanding effects for the Local Government Act 1988, Part I. (See end of Document for details)*

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

#### **Subordinate Legislation Made**

**P8** S. 15: for exercises of this power see Index to Government orders.

**P9** S. 15(5); s. 2(9)(with s. 15(5)) power exercised by S.I. 1991/262 and 1991/312

**P10** S. 15(6); s. 6(3) (with ss. 8(1) and 15(6)) power exercised by S.I. 1991/232.

## **16 Supplementary.**

- (1) No provision of this Part relating to accounts shall prejudice any provision of Part III of the <sup>M10</sup>Local Government Finance Act 1982, or Part VII of the <sup>M11</sup>Local Government (Scotland) Act 1973, relating to the accounts.
- (2) Nothing in sections 13 and 14 above shall prejudice any remedy available to a person (apart from those sections) in respect of a failure to observe a provision of this Part.
- (3) In Schedule 1 to the <sup>M12</sup>Local Government Finance Act 1987 (list of accounts) the following shall be inserted after paragraph 13—

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



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

**C34** S. 16 applied (with modification) (15.8.1994) by 1994 c. 19, s. 52 (with ss. 54(5)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1994/2109, art. 2

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**Marginal Citations**

**M10** 1982 c. 32.

**M11** 1973 c. 65.

**M12** 1987 c. 6.

**Status:**

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There are currently no known outstanding effects for the Local Government Act 1988, Part I.