



# Transport Act 1985

## 1985 CHAPTER 67

### PART V

#### FINANCIAL PROVISIONS

##### *Expenditure on public passenger transport services*

#### **88 Expenditure on public passenger transport services.**

- (1) Any power conferred on any authority responsible for expenditure on public passenger transport services to enter into agreements providing for service subsidies (however framed, and whether arising under this Act or under any other enactment) shall be subject to sections 89 to 92 of this Act.
- (2) It shall be the duty—
  - (a) of all such authorities, in exercising and performing their functions with respect to securing the provision of public passenger transport services; and
  - (b) of all authorities who are—
    - (i) local education authorities in England and Wales or education authorities in Scotland; or
    - (ii) local authorities exercising, in England and Wales, social services functions or, in Scotland, social work functions;in relation to any expenditure on transport for the purposes of or in connection with the exercise and performance of their functions as local education authorities or education authorities or (as the case may be) of their social services or social work functions;to co-operate with one another so as to secure, in the interests of the ratepayers of their areas, the best value for money from their expenditure on public passenger transport, taken as a whole.
- (3) In subsection (2)(b)(ii) above “local authority” means—
  - (a) in relation to England and Wales, an authority who are a local authority for the purposes of the <sup>M1</sup>Local Authority Social Services Act 1970; and

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- (b) in relation to Scotland, an authority who are a local authority for the purposes of the <sup>M2</sup>Social Work (Scotland) Act 1968.
- (4) It shall be the duty of all authorities mentioned in subsection (2) above to afford to one another such information as may be reasonably required for the purpose of the co-operation required of them under that subsection.
- (5) Where, as a result of any such co-operation, any such authority—
- (a) incur expenditure which they would not otherwise have incurred; or
  - (b) receive less revenue than they would otherwise have done;
- that authority may, by notice to the other authority or authorities concerned, require that other authority or (as the case may be) those other authorities to reimburse the amount of that expenditure or of that reduction in revenue.
- (6) If—
- (a) any amount in respect of which, in accordance with a notice under subsection (5) above, any such authority or authorities are required to reimburse another such authority; or
  - (b) where two or more such authorities are required by any such notice to reimburse another such authority, the share of that amount payable by each authority concerned;
- is not determined by agreement between both or all the authorities concerned within six months of the receipt of the notice or such longer period as may be agreed between them, that amount and (where paragraph (b) above applies) the share payable by each authority concerned shall be determined by an arbitrator or, in Scotland, by an arbiter.
- (7) Any such arbitrator or (as the case may be) arbiter shall be appointed either by agreement between the authorities concerned or, in default of such agreement, by the President of the Chartered Institute of Public Finance and Accountancy.
- (8) References in this Part of this Act to authorities responsible for expenditure on public passenger transport services are references to—
- (a) Passenger Transport Executives;
  - (b) non-metropolitan county and district councils in England and Wales; and
  - (c) <sup>F1</sup> . . . councils in Scotland;
- and in sections 89 to 92 of this Act include references to London Regional Transport in relation to any exercise of their power under section 3(2) of the <sup>M3</sup>London Regional Transport Act 1984 (contracting-out powers) which by virtue of section 65(3) of this Act is subject to those sections.

#### Textual Amendments

**F1** Words in s. 88(8)(c) repealed (S.) (1.4.1996) by [S.I. 1996/974, art. 2\(2\)](#), [Sch. 2](#)

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

**C2** S. 88(1) excluded (E.W.) (26.10.2001 for E. and otherwise prosp.) by [2000 c. 38, ss. 124\(6\), 275](#); [S.I. 2001/3342, art. 2](#), [Sch.](#)

S. 88(1) excluded (S.) (1.7.2001) by [2001 asp 2, s. 13\(9\)](#) (with s. 66); [S.S.I. 2001/132, art. 2\(3\)](#), [Sch. Pt. I](#)

#### Marginal Citations

**M1** [1970 c. 42.](#)

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M2 1968 c. 49.  
M3 1984 c. 32.

**89** **Obligation to invite tenders for subsidised services.** **E+W**

- (1) Subject to sections 90 and 91 of this Act, an authority responsible for expenditure on public passenger transport services may not enter into an agreement providing for service subsidies under which a local service is to be provided except by accepting a tender invited in pursuance of this section.
- (2) Where any such authority propose to secure the provision of any local service by entering into any such agreement, the authority shall invite tenders for the provision of that service for such period and on such basis as may be specified in the invitation to tender.
- (3) <sup>F2</sup> .....
- (4) Subject to subsection (5) below, any such invitation—
  - (a) must be issued generally, in such manner as the authority issuing the invitation consider appropriate for bringing it to the attention of persons who may be interested; and
  - (b) must also be issued individually to all persons who have given to that authority a written notice indicating that they wish to receive invitations to tender for the provision of local services for that authority’s area or (as the case may be) for the provision of such services of any description to which the invitation relates.
- (5) Any such notice shall specify the address to which any such invitation is to be directed, and it shall be sufficient for the purposes of subsection (4)(b) above if the authority send the invitation to the person giving any such notice at the address so specified.
- (6) An authority issuing an invitation to tender under this section shall not accept any tender submitted by a person who is not the holder of either—
  - (a) a PSV operator’s licence, not being—
    - <sup>F3</sup>(i) .....
    - (ii) a licence to which any condition is attached under section 26 of this Act prohibiting the holder from using vehicles under the licence to provide local services of all descriptions or (as the case may be) of any description to which the invitation relates; or
  - (b) a permit under section 22 of this Act.
- <sup>F4</sup>(7) An authority issuing an invitation to tender under this section shall, in determining whether to accept a tender submitted in response to the invitation or which (if any) of several such tenders to accept, have regard in particular to—
  - (a) a combination of economy, efficiency and effectiveness;
  - (b) the implementation of the policies set out in the appropriate bus strategy; and
  - (c) the reduction or limitation of traffic congestion, noise or air pollution.
- <sup>F4</sup>(8) In subsection (7)(b) above “the appropriate bus strategy” means—
  - (a) in the case of a local transport authority (within the meaning of section 108(4) of the Transport Act 2000), their bus strategy;
  - (b) in the case of a district council which is not such an authority, the bus strategy of the council for the county in which the district is situated; and

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- (c) in the case of a Passenger Transport Executive for a passenger transport area, the bus strategy made jointly by the Passenger Transport Authority for the area and the councils for the metropolitan districts comprised in the area.]

#### Extent Information

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

#### Textual Amendments

- F2** S. 89(3) repealed (E.W.) (1.2.2001 for E. and 14.8.2002 for W.) by [2000 c. 38, s. 274, Sch. 31 Pt. II](#); [S.I. 2001/57, art. 3\(2\), Sch. 3 Pt. I](#) (with saving in [Sch. 3 Pt. II](#) (as amended by [S.I. 2001/115, art. 3](#))); [S.I. 2002/2024, {art. 2\(b\)}](#)
- F3** S. 89(6)(a)(i) repealed (8.11.1995) by [1995 c. 44, s. 1\(1\), Sch. 1 Pt. V Group 2](#)
- F4** S. 89(7)(8) substituted (E.W.) (1.2.2001 for E. and 1.8.2001 for W.) by [2000 c. 38, s. 152\(2\)](#); [S.I. 2001/57, art. 3\(2\), Sch. 3 Pt. I](#) (with saving in [Sch. 3 Pt. II](#) (as amended by [S.I. 2001/115, art. 3](#))); [S.I. 2001/2788, art. 2, Sch. 1 para. 7](#)

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

- C3** S. 89(1) excluded (28.7.1998) by [1998 c. iii, s. 1, Sch. s. 51\(2\)](#) of Order  
S. 89(1) excluded (24.7.2002) by [S.I. 2001/3627, art. 50](#)
- C4** S. 89(1) restricted (W.) (1.4.2002) by [S.I. 1985/1921, reg. 3](#) (as substituted by The Service Subsidy Agreements (Tendering) (Amendment) (Wales) Regulations 2002 ([S.I. 2002/520, reg. 2](#)))
- C5** S. 89(1) excluded (E.) (2.9.2002) by [The Service Subsidy Agreements \(Tendering\) \(England\) Regulations 2002 \(S.I. 2002/2090\), reg. 3](#)

### [<sup>F789</sup> **Obligation to invite tenders for subsidised services.** **S**

- (1) Subject to sections 90 and 91 of this Act, an authority responsible for expenditure on public passenger transport services may not enter into an agreement providing for service subsidies under which a local service is to be provided except by accepting a tender invited in pursuance of this section.
- (2) Where any such authority propose to secure the provision of any local service by entering into any such agreement, the authority shall invite tenders for the provision of that service for such period and on such basis as may be specified in the invitation to tender.
- (3) An invitation to tender under this section may not include conditions with respect to the terms of employment of persons to be employed in providing any service to which the invitation to tender relates.
- (4) Subject to subsection (5) below, any such invitation—
  - (a) must be issued generally, in such manner as the authority issuing the invitation consider appropriate for bringing it to the attention of persons who may be interested; and
  - (b) must also be issued individually to all persons who have given to that authority a written notice indicating that they wish to receive invitations to tender for the provision of local services for that authority's area or (as the case may be) for the provision of such services of any description to which the invitation relates.

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- (5) Any such notice shall specify the address to which any such invitation is to be directed, and it shall be sufficient for the purposes of subsection (4)(b) above if the authority send the invitation to the person giving any such notice at the address so specified.
- (6) An authority issuing an invitation to tender under this section shall not accept any tender submitted by a person who is not the holder of either—
- (a) a PSV operator's licence, not being—
    - <sup>F8</sup>(i) . . . . .
    - (ii) a licence to which any condition is attached under section 26 of this Act prohibiting the holder from using vehicles under the licence to provide local services of all descriptions or (as the case may be) of any description to which the invitation relates; or
  - (b) a permit under section 22 of this Act.
- (7) The authority issuing any invitation to tender under this section [<sup>F9</sup>for the provision of services other than those mentioned in subsection (9) below] shall determine—
- (a) whether to accept a tender submitted in response to the invitation; or
  - (b) which (if any) of several such tenders to accept;
- solely by reference to what in their view is the most effective and economic application of the funds at their disposal for the payment of service subsidies.
- (8) Subsection (7) above shall not be taken as requiring the authority to limit their consideration, in the case of any such invitation to tender, to the application of those funds for the purpose of securing the provision of the particular service to which that invitation to tender relates; and accordingly the authority may (in particular) take into account in making, in relation to any such invitation to tender, any determination to which that subsection applies—
- (a) costs and benefits in relation to any proposed expenditure by that or any other authority for the purpose of securing the provision of any other public passenger transport service;
  - (b) costs and benefits in relation to any proposed expenditure on transport for the purposes of or in connection with the exercise and performance by that or any other authority of any functions of a description mentioned in section 88(2)(b) of this Act; and
  - (c) any matter appearing to the authority to be relevant to determining whether the particular service to which that invitation to tender relates, and any other relevant service, would be effectively provided by any person who has submitted a tender in response to that invitation to tender.

For the purposes of paragraph (c) above, a service other than the particular service there mentioned is relevant if the authority propose to incur expenditure for the purpose of securing its provision and any tender or proposal for the provision of that service by any such person is also under consideration by the authority.

- [<sup>F10</sup>(9) An authority issuing an invitation to tender under this section for the provision of any service for the carriage of passengers by road which requires, for the purposes of Part IV of this Act, a PSV operator's licence, shall, in determining whether to accept a tender submitted in response to the invitation or which (if any) of several such tenders to accept, have regard in particular to—
- (a) a combination of economy, efficiency and effectiveness;
  - (b) the implementation of—
    - (i) their local transport strategy; and

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- (ii) the general policies formulated by them under section 63(2)(b) of this Act or section 9A(1) of the Transport Act 1968 (c.73), as the case may be; and
  - (c) the reduction or limitation of traffic congestion, noise or air pollution.
- (10) In subsection (9)(b)(i) above, “local transport strategy” has the meaning given by section 82(1) of the Transport (Scotland) Act 2001 (asp 2).]]

#### Extent Information

- E4** This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

#### Textual Amendments

- F7** S. 89 repealed (S.) (1.4.2003) by Local Government in [Scotland Act 2003 \(asp 1\)](#), **ss. 60(3)(c)**, 62(2); [S.S.I. 2003/134](#), **art. 2(1)**, [Sch.](#)
- F8** S. 89(6)(a)(i) repealed (8.11.1995) by 1995 c. 44, s. 1(1), **Sch. 1 Pt. V** Group 2
- F9** Words in s. 89(7) inserted (S.) (1.4.2001) by [2001 asp 2](#), **s. 36(2)(a)** (with s. 66); [S.S.I. 2001/132](#), **art. 2(2)**, **Sch. Pt. I** (with saving in [art. 3](#))
- F10** S. 89(9)(10) inserted (S.) (1.4.2001) by [2001 asp 2](#), **s. 36(2)(b)** (with s. 66); [S.S.I. 2001/132](#), **art. 2(2)**, **Sch. Pt. I** (with saving in [art. 3](#))

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

- C7** S. 89(1) excluded (28.7.1998) by 1998 c. iii, s. 1, **Sch. s. 51(2)** of Order  
 S. 89(1) excluded (24.7.2001) by [S.I. 2001/3627](#), **art. 50**

## 90 Provisions supplementary to section 89. **E+W**

- (1) The period specified in any invitation to tender issued under section 89 of this Act as the period for which a service to which the invitation relates is to be provided shall not exceed five years beginning with the date on which any agreement entered into by accepting a tender submitted in response to the invitation is concluded.
- (2) Such information as may be prescribed with respect to any tenders submitted in response to any such invitation to tender shall be published by the authority issuing the invitation in such manner as may be prescribed.
- (3) On entering into an agreement by accepting any such tender that authority shall publish in such manner as may be prescribed their reasons for considering that the payment of service subsidies to secure the service in question in accordance with the terms of that tender [<sup>F5</sup>accords with section 89(7) of this Act.]
- (4) Regulations may provide for treating a specification of terms of service, in such form as may be prescribed—
  - (a) prepared, with reference to any invitation to tender issued under section 89 of this Act by any authority responsible for expenditure on public passenger transport services, by the authority issuing the invitation with respect to the provision of that service by a company to be formed in pursuance of any requirement under Part IV of this Act to carry on any business which includes any current activities of that authority; and
  - (b) ratified by that company after its formation within such period and in such manner as may be prescribed;

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as if it were a tender submitted in response to that invitation by that company within any period allowed for the submission of tenders in accordance with that invitation.

- (5) The reference in subsection (4)(a) above to any current activities of an authority responsible for expenditure on public passenger transport services is a reference to any activities which at the time when the specification of terms of service is prepared are currently carried on by or on behalf of that authority, or by any body of which that authority is a member or to which it appoints any members.

#### Extent Information

- E2** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

#### Textual Amendments

- F5** Words in s. 90(3) substituted (E.W.) (1.2.2001 for E. and 1.8.2001 for W.) by 2000 c. 38, s. 152(3); S.I. 2001/57, art. 3(2), Sch. 3 Pt. I (with saving in Sch. 3 Pt. II (as amended by S.I. 2001/115, art. 3)); S.I. 2001/2788, art. 2, Sch. 1 para. 7

### [<sup>F11</sup>90] Provisions supplementary to section 89. **S**

- (1) The period specified in any invitation to tender issued under section 89 of this Act as the period for which a service to which the invitation relates is to be provided shall not exceed five years beginning with the date on which any agreement entered into by accepting a tender submitted in response to the invitation is concluded.
- (2) Such information as may be prescribed with respect to any tenders submitted in response to any such invitation to tender shall be published by the authority issuing the invitation in such manner as may be prescribed.
- (3) On entering into an agreement by accepting any such tender that authority shall publish in such manner as may be prescribed their reasons for considering that the payment of service subsidies to secure the service in question in accordance with the terms of that tender [<sup>F12</sup>accords with section 89(7), or as the case may be (9), of this Act.]
- (4) Regulations may provide for treating a specification of terms of service, in such form as may be prescribed—
- (a) prepared, with reference to any invitation to tender issued under section 89 of this Act by any authority responsible for expenditure on public passenger transport services, by the authority issuing the invitation with respect to the provision of that service by a company to be formed in pursuance of any requirement under Part IV of this Act to carry on any business which includes any current activities of that authority; and
  - (b) ratified by that company after its formation within such period and in such manner as may be prescribed;

as if it were a tender submitted in response to that invitation by that company within any period allowed for the submission of tenders in accordance with that invitation.

- (5) The reference in subsection (4)(a) above to any current activities of an authority responsible for expenditure on public passenger transport services is a reference to any activities which at the time when the specification of terms of service is prepared are currently carried on by or on behalf of that authority, or by any body of which that authority is a member or to which it appoints any members.]

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#### Extent Information

- E5** This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

#### Textual Amendments

- F11** S. 90 repealed (S.) (1.4.2003) by Local Government in [Scotland Act 2003 \(asp 1\)](#), [ss. 60\(3\)\(c\)](#), [62\(2\)](#); [S.S.I. 2003/134](#), [art. 2\(1\)](#), [Sch.](#)
- F12** Words in [s. 90\(3\)](#) substituted (S.) (1.4.2001) by [asp 2](#), [s. 36\(3\)](#) (with [s. 66](#)); [S.S.I. 2001/132](#), [art. 2\(2\)](#), [Sch. Pt. I](#)

## 91 Exceptions from section 89.

- (1) Regulations may provide for excluding from section 89(1) of this Act agreements of any description specified in the regulations; and any such description may be framed by reference to—
  - (a) the description of service to which the agreement relates;
  - (b) the description of persons proposing to operate the service;
  - (c) the period for which the service is to be provided under the agreement;
  - (d) the aggregate amount of the service subsidies provided for under the agreement; or
  - (e) any other relevant circumstances.
- (2) Section 89(1) of this Act shall not apply in any case where it appears to an authority responsible for expenditure on public passenger transport services that action is urgently required for the purpose of—
  - (a) maintaining an existing service;
  - (b) securing the provision of a service in place of a service which has ceased to operate; or
  - (c) securing the provision of a service to meet any public transport requirement which has arisen unexpectedly and ought in the opinion of the authority to be met without delay;

and that it is necessary for that purpose to enter into an agreement providing for service subsidies in order to secure that service.
- (3) Where by virtue of subsection (2) above any such authority enter into an agreement to which section 89(1) of this Act does not apply, the authority shall as soon as possible invite tenders for the provision of the service which is the subject of that agreement for such period and on such basis as may be specified in the invitation to tender; and sections 89(3) to (8) and 90 of this Act shall apply in any such case as if the invitation had been issued under section 89(2).
- (4) Any agreement entered into by virtue of subsection (2) above shall be made so as to remain in force no later than the end of the period of three months beginning with the day immediately following the end of the period allowed for the submission of tenders in accordance with the invitation to tender issued under section (3) above.
- (5) Subject to the following provisions of this section, where—
  - (a) an invitation to tender for the provision of any service is issued under section 89(2) of this Act or subsection (3) above; and



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- (b) no tender, or no tender which the authority issuing the invitation consider acceptable, is submitted in response to that invitation;  
any power of that authority to enter into an agreement providing for service subsidies in order to secure that service shall cease to be subject to section 89(1) of this Act.
- (6) Any agreement which by virtue of subsection (5) above is entered into by an authority responsible for expenditure on public passenger transport services otherwise than by acceptance of a tender invited in pursuance of section 89 or subsection (3) above shall be made so as to remain in force no later than the end of the period specified in pursuance of section 90(1) of this Act in the invitation to tender mentioned in subsection (5)(a) above.
- (7) On entering into any such agreement an authority shall publish in such manner as may be prescribed either—
- (a) a statement that no tender was submitted in response to that invitation to tender; or
- (b) a statement of their reasons for considering that no tender so submitted was acceptable;
- as the case may require.

## 92 **General provisions with respect to the exercise of service subsidy functions.** **E** **+W**

- (1) An authority responsible for expenditure on public passenger transport services shall, in the exercise and performance of their functions in relation to agreements providing for service subsidies, [<sup>F6</sup>have regard to the interests of the public and of persons providing public passenger transport services in their area.]
- (2) Regulations under this section—
- (a) may make further provision for regulating the exercise and performance by authorities responsible for expenditure on public passenger transport services of their functions in relation to agreements providing for service subsidies; and
- (b) may make provision for limiting to an amount specified in the regulations the aggregate amount of the service subsidies any such authority may agree to pay under any one such agreement; and
- (c) may make provision for exceptions from section 89(4) of this Act in such cases as may be prescribed.
- (3) The provisions of sections 89 to 91 of this Act shall be subject to this section and any provision made by regulations under this section.

### Extent Information

- E3** This version of this provision extends to England and Wales; a separate version has been created for Scotland only

### Textual Amendments

- F6** Words in s. 92(1) substituted (E.W.) (1.2.2001 for E. and 1.8.2001 for W.) by 2000 c. 38, s. 152(4); S.I. 2001/57, art. 3(2), **Sch. 3 Pt. I** (with saving in **Sch. 3 Pt. II** (as amended by S.I. 2001/115, art. 3)); S.I. 2001/2788, art. 2, **Sch. 1 para. 7**

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

C6 S. 92(1) excluded by 1998 c. iii, s. 1, **Sch. Part VI**, s. 51(2)

**92 General provisions with respect to the exercise of service subsidy functions. S**

- (1) An authority responsible for expenditure on public passenger transport services shall, in the exercise and performance of their functions in relation to agreements providing for service subsidies, [<sup>F13</sup>have regard to the interests of the public and of persons providing] public passenger transport services in their area.
- (2) Regulations under this section—
  - (a) may make further provision for regulating the exercise and performance by authorities responsible for expenditure on public passenger transport services of their functions in relation to agreements providing for service subsidies; and
  - (b) may make provision for limiting to an amount specified in the regulations the aggregate amount of the service subsidies any such authority may agree to pay under any one such agreement; and
  - (c) may make provision for exceptions from section 89(4) of this Act in such cases as may be prescribed.
- (3) The provisions of sections 89 to 91 of this Act shall be subject to this section and any provision made by regulations under this section.

**Extent Information**

E6 This version of this provision extends to Scotland only; a separate version of this provision has been created for England and Wales only

**Textual Amendments**

F13 Words in s. 92(1) substituted (S.) (1.4.2001) by 2001 asp 2, s. 36(4) (with s. 66); S.S.I. 2001/132, art. 2(2), **Sch. Pt. I**

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

C8 S. 92(1) excluded by 1998 c. iii, s. 1, **Sch. Part VI**, s. 51(2)

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