

SCHEDULES

SCHEDULE 6

Section 32.

DIRECT LABOUR ORGANISATIONS

Local Government, Planning and Land Act 1980 (c. 65)

- 1 Part III of the Local Government, Planning and Land Act 1980 shall be amended as mentioned in paragraphs 2 to 10 below.
- 2 (1) Section 7 (limitations on power to enter into works contracts) shall be amended as follows.
- (2) In subsection (1) after “works contract” (in each place) there shall be inserted “under which they are to carry out work”.
- (3) After subsection (1) there shall be inserted—
- “(1A) A local authority may not enter into a works contract under which they are to carry out work unless the competition condition is fulfilled, that is, the other party to the contract, in entering into it and doing anything else in connection with it 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.
- (1B) Subsection (1A) above shall not prevent the local authority from entering into the contract unless, at the time it is proposed to be entered into, they are aware of the failure to fulfil the competition condition.”
- (4) At the end of subsection (3)(c) there shall be added “who are not, or include at least three persons who are not, local authorities or development bodies”.
- 3 (1) Section 9 (regulation of functional work) shall be amended as follows.
- (2) In subsection (4)(a) for “included in a list maintained by them” there shall be substituted “who are not, or include at least three persons who are not, local authorities or development bodies and who are included in a list maintained by the authority or body seeking to undertake the work”.
- (3) After subsection (4)(a) there shall be inserted—
- “(aa) that they have included in the invitation prescribed matters (which may relate to the time allowed for responding, the method of responding, or otherwise); and
- (aaa) that they have 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
- (aaaa) that, in reaching the decision that they should undertake the work and in doing anything else in connection with the work before reaching the decision, they have not acted in a manner having the

Status: This is the original version (as it was originally enacted).

effect or intended or likely to have the effect of restricting, distorting or preventing competition; and”.

- (4) After subsection (4)(b) there shall be inserted “; and “prescribed” in paragraphs (aa) and (aaa) above means prescribed by regulations made by the Secretary of State.”
- (5) After subsection (5) there shall be inserted—
- “(5A) Regulations under subsection (3)(a) above may provide that the conditions in subsection (4)(aa) and (aaa) above are not to apply if the work falling within a description specified by the regulations satisfies such criteria as are so specified.”
- (6) In subsection (6) for “conditions specified in subsection (4)” there shall be substituted “condition specified in subsection (4)(a)”.
- 4 In section 10 (accounts) in subsection (3) after paragraph (b) there shall be inserted “; and
- (c) the maintenance of street lighting.”
- 5 (1) Section 13 (annual balance sheet etc.) shall be amended as follows.
- (2) Subsection (2)(a) and subsection (3) shall be omitted.
- (3) After subsection (5) there shall be inserted—
- “(5A) A revenue account must be expressed in such form as the Secretary of State may specify in writing.”
- 6 In section 16 (general financial duty: treatment of deficits) subsection (4) shall be omitted.
- 7 Section 17 (rates of return: powers of Secretary of State) shall be omitted.
- 8 (1) Section 18 (annual reports) shall be amended as follows.
- (2) After subsection (1) there shall be inserted—
- “(1A) A report under this section must include—
- (a) a statement identifying such (if any) of the work undertaken as falls within construction or maintenance work by virtue of a decision under section 20(5) below; and
- (b) a copy of each of the documents which it is required to prepare in accordance with section 13(1) above.”
- (3) After subsection (2) there shall be inserted—
- “(2A) A local authority or development body who have prepared a report under this section shall send a copy to the Secretary of State and to their auditor not later than 31st October in the financial year following that to which the report relates.
- (2B) Where a local authority’s or development body’s auditor has been sent a copy of a report in accordance with subsection (2A) above, he shall consider the statement of rate of return a copy of which is contained in the report by virtue of subsection (1A)(b) above, and shall give his written opinion on the statement to the authority or body concerned and to the Secretary of State.”
- (4) At the end of the section there shall be added—

Status: This is the original version (as it was originally enacted).

“(5) For the purposes of subsections (2A) and (2B) above a local authority’s or development body’s auditor is the person who under any enactment is appointed, for the financial year for which the report is prepared, to audit the accounts of the authority or body.”

9 After section 19 there shall be inserted—

“Sanctions

19A Notice for purpose of getting information

- (1) If it appears to the Secretary of State that a local authority or development body have carried out or undertaken construction or maintenance work—
- (a) under a contract they have entered into in contravention of section 7 above,
 - (b) in circumstances where any provision of section 9(2) to (7) above has not been complied with as regards the work,
 - (c) in circumstances where section 10 above has not been complied with as regards the work,
 - (d) in circumstances where the provisions of section 12(1) above or of directions under section 12(5) above have not been complied with as regards any account kept in respect of the work,
 - (e) in circumstances where section 13 above has not been complied with as regards the preparation or contents of the documents required by that section for the financial year in which the work is undertaken,
 - (f) in circumstances where any provision of section 16(1) to (3) above has not been complied with as regards work of the description concerned, or
 - (g) in circumstances where any provision of section 18(1) to (2A) above has not been complied with as regards the financial year in which the work is undertaken,
- he may serve on the authority or body a written notice falling within subsection (2) below.
- (2) The notice is one which—
- (a) informs the authority or body that it appears to him that they have acted as mentioned in one of the paragraphs (identified in the notice) 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 or body 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 19B below.
- (4) The Secretary of State may serve on an authority or body different notices under this section identifying the same work, whether they identify the same paragraph or different paragraphs of subsection (1) above.

Status: This is the original version (as it was originally enacted).

19B Power to give directions

- (1) Where—
 - (a) the Secretary of State has served a notice on an authority or body under section 19A above,
 - (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 or body have acted as mentioned in the paragraph concerned of section 19A(1) above,he may give a direction under subsection (2) or (3) below.
- (2) The Secretary of State may direct that with effect from such date as is specified in the direction the authority or body—
 - (a) shall cease to have power to carry out such construction or maintenance work as is identified in the direction, or
 - (b) shall, as regards such construction or maintenance if such conditions as are specified in the direction are fulfilled.
- (3) Alternatively, he may direct that with effect from such date as is specified in the direction the authority or body—
 - (a) shall cease to have power to carry out such construction or maintenance work as is identified in the direction, and
 - (b) shall, as regards such other construction or maintenance work as is so identified, only have power to carry it out if such conditions as are specified in the direction are fulfilled.
- (4) Where the Secretary of State has given a direction under subsection (2) or (3) 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.
- (5) If the Secretary of State directs under this section that an authority or body 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.
- (6) The power to give a direction under this section shall be exercised in writing.

Status: This is the original version (as it was originally enacted).

- (7) A direction under this section may include such supplementary, incidental, consequential or transitional provisions (whether with respect to work in progress or outstanding contractual commitments or otherwise) as appear to the Secretary of State to be necessary or expedient.”
- 10 (1) Section 20 (interpretation) shall be amended as follows.
- (2) In subsection (1) after paragraph (b) of the definition of “construction or maintenance work” there shall be inserted “and
- (c) the maintenance of street lighting;”.
- (3) In subsection (1), in paragraph (a) of the definition of “development body”, sub-paragraph (iii) and the word “and” at the end of sub-paragraph (ii) shall be omitted.
- (4) In subsection (1) for paragraph (a) of the definition of “local authority” there shall be substituted—
- “(a) in relation to England and Wales—
- (i) a county council, a district council, a London borough council, the Inner London Education Authority, a joint authority established by Part IV of the Local Government Act 1985 or the Council of the Isles of Scilly, or
- (ii) The Common Council of the City of London in its capacity as local authority or police authority;”.
- (5) In subsection (4)—
- (a) after the word “Commission”, in both places where it occurs, there shall be inserted “or the Secretary of State”; and
- (b) after the word “which”, in the first place where it occurs, there shall be inserted “is an agreement made by virtue of any provision of the Employment and Training Act 1973, which”.
- (6) After subsection (4) there shall be inserted—
- “(5) If a local authority or development body undertake work which (apart from this subsection) would not fall within construction or maintenance work, and which in their opinion cannot be undertaken efficiently separately from construction or maintenance work, the work shall (if they so decide) be treated as falling within construction or maintenance work.
- (6) In section 10(3)(c) above and in subsection (1) above, in paragraph (c) of the definition of “construction or maintenance work”, “street” (except in relation to Scotland) has the meaning given by section 329(1) of the Highways Act 1980 and (in relation to Scotland) means a road as defined in section 25(3) of the Local Government and Planning (Scotland) Act 1982.
- (7) Nothing in sections 19A and 19B 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 of this Act.”

Local Government (Scotland) Act 1975 (c. 30)

- 11 (1) Schedule 3 to the Local Government (Scotland) Act 1975 shall be amended as follows.
- (2) In paragraph 22(1) (local authority funds)—

Status: This is the original version (as it was originally enacted).

- (a) for “either or both” there shall be substituted “any”, and
 - (b) after sub-paragraph (b) there shall be inserted—
 - “(c) a fund (to be known as a “DLO reserve fund”) to which there may be charged any deficit in, or into which there may be paid any surplus of—
 - (i) any DLO revenue account kept by the authority under section 10(1) of the Local Government, Planning and Lnad Act 1980;
 - (ii) any account kept by the authority under section 9(2) of the Local Government Act 1988.”
- (3) After paragraph 24 there shall be inserted—
- “24A A local authority by whom a DLO reserve fund is established under paragraph 22 above may from time to time—
- (a) pay into that fund any surplus; or
 - (b) charge to that fund any deficit,
- referred to in paragraph 22(1)(c) above.”