



Local Government and Housing Act 1989

1989 CHAPTER 42

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.
- (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;

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- (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—

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- (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;
 - (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

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(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;

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- (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—
- (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);

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- (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.
- (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

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- (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-imburement 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.

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- (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.