



# Local Government and Housing Act 1989

## 1989 CHAPTER 42

### PART V

#### COMPANIES IN WHICH LOCAL AUTHORITIES HAVE INTERESTS

#### **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 <sup>M1</sup>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—

---

*Status: Point in time view as at 01/04/2005. This version of this provision has been superseded.*

*Changes to legislation: Local Government and Housing Act 1989, Section 68 is up to date with all changes known to be in force on or before 06 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (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 <sup>M2</sup>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

*Status: Point in time view as at 01/04/2005. This version of this provision has been superseded.*

*Changes to legislation: Local Government and Housing Act 1989, Section 68 is up to date with all changes known to be in force on or before 06 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (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.

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

- C1** S. 68 applied (with modifications) (11.3.1996) by S.I. 1996/330, **reg. 9(1)**
- C2** S. 68(1) applied (29.4.1996) by 1992 c. 19, **s. 1A(5)** (as inserted (29.4.1996) by 1996 c. 10, **s. 5(2)**) (which amendment fell (11.9.1998) by reason of the repeal of 1996 c. 10, **s. 5(2)** by 1998 c. 18, **ss. 54(3), 55(2), Sch. 5**)
- S. 68(1) applied (11.9.1998) by 1998 c. 18, **ss. 45(5), 55(2)**
- C3** S. 68(1) applied (with modifications) (14.3.1995) by S.I. 1995/402, **reg. 3(2)**
- C4** S. 68(1) applied (1.4.2005) by Public Audit (Wales) Act 2004 (c. 23), **ss. 48(6), 73**; S.I. 2005/558, **art. 2, Sch. 1**

#### **Commencement Information**

- I1** S. 68 wholly in force at 7.10.1993; s. 68 not in force at Royal Assent see s. 195(2); s. 68 in force for certain purposes at 16.1.1990 by S.I. 1989/2445, **art. 4**; s. 68 in force so far as not already in force at 7.10.1993 by S.I. 1993/2410, **art. 3**

#### **Marginal Citations**

- M1** 1985 c. 6.
- M2** 1985 c. 6.

**Status:**

Point in time view as at 01/04/2005. This version of this provision has been superseded.

**Changes to legislation:**

Local Government and Housing Act 1989, Section 68 is up to date with all changes known to be in force on or before 06 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.