



Local Government Act 1992

1992 CHAPTER 19

PART I

CITIZEN'S CHARTER PROVISIONS

Competition

8 Application of competitive tendering to professional services etc

- (1) The Secretary of State may by order make such provision in relation to proposals for the carrying out of work to which this section applies as he considers appropriate for facilitating or requiring separate procedures to be followed for—
 - (a) the evaluation for the purposes of Part I of the 1988 Act of the quality of the services which persons willing to carry out the work are able to provide and of their fitness to provide them; and
 - (b) the evaluation for those purposes of the financial terms on which such persons would carry out the work.
- (2) This section applies to any work which—
 - (a) by virtue of an order under section 2(3) of the 1988 Act, falls within a defined activity for the purposes of Part I of that Act; and
 - (b) consists in, or involves, the provision of professional advice or of other professional services or the application of any financial or technical expertise.
- (3) Before making an order under this section the Secretary of State shall consult such representatives of local government as appear to him to be appropriate.
- (4) The power to make an order under this section 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 a resolution of, each House of Parliament.
- (5) The power to make an order under this section shall include power—
 - (a) to make such incidental, consequential, transitional or supplementary provision as the Secretary of State thinks necessary or expedient; and

Status: This is the original version (as it was originally enacted).

- (b) to make different provision for different cases, including different provision for different localities and for different authorities;

and the power conferred by virtue of paragraph (a) above shall include power, for the purposes of, or in connection with, any separate procedures for which an order under this section provides, to modify any of the provisions of Part I of the 1988 Act.

- (6) The powers conferred by this section shall be without prejudice to the power conferred by section 15(8)(a) of the 1988 Act (power to make incidental modifications in connection with an order extending the defined activities).

9 Power to define conduct as competitive or anti-competitive

- (1) The Secretary of State may by regulations make provision, for the purposes of one or more of the conditions mentioned in subsection (2) below, for conduct described in the regulations to be regarded, in accordance with the regulations and in such circumstances as may be so described—

- (a) as conduct which has the effect of restricting, preventing or distorting competition or is likely to have that effect; or
- (b) as conduct which does not have that effect and is not likely to have that effect.

- (2) The conditions referred to in subsection (1) above are—

- (a) the condition specified in section 7(1A) of the 1980 Act (competition condition in the case of certain works contracts);
- (b) the condition specified in section 9(4)(aaaa) of the 1980 Act (competition condition applying in the case of prescribed construction or maintenance work);
- (c) the condition set out in section 4(5) of the 1988 Act (competition condition in the case of works contracts relating to work falling within a defined activity);
- (d) the condition set out in section 7(7) of the 1988 Act (competition condition in the case of functional work falling within such an activity).

- (3) Without prejudice to the generality of subsection (1) above or to any power conferred by section 8 of the 1988 Act (regulations with respect to fulfilment of conditions), regulations under this section may—

- (a) prescribe the matters which are to be taken into account, or disregarded, in the course of any evaluation made for the purpose of deciding who should undertake or carry out particular work;
- (b) prescribe the manner in which, or extent to which, any matter described in the regulations is to be so taken into account or disregarded;
- (c) prescribe maximum and minimum periods for the periods which are required, by virtue of paragraphs (b) and (d) of subsection (2) of section 7 of the 1988 Act, to be specified in a notice published for the purposes of subsection (1) of that section (periods for inspection of specification and for notifying an authority of a wish to tender);
- (d) prescribe a maximum and a minimum period for the period which is to elapse, in a case where a notice has been so published, between—
 - (i) the announcement of the decision as to who should carry out the work in question; and
 - (ii) the beginning of the period during which the work is to be carried out;
- (e) make provision for the issue by the Secretary of State of guidance as to how conduct restricting, distorting or preventing competition is to be avoided in

the doing of anything under or for the purposes of Part III of the 1980 Act or Part I of the 1988 Act; and

- (f) require the extent (if any) to which there has been a contravention of guidance issued by the Secretary of State under the regulations to be taken into account in any determination of whether or not a condition mentioned in subsection (2) above has been fulfilled.
- (4) The power to make regulations under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament; and that power shall include power—
- (a) to make such incidental, consequential, transitional or supplementary provision as the Secretary of State thinks necessary or expedient; and
 - (b) to make different provision for different cases, including different provision for different localities and for different bodies.

10 Publicity for tender specifications

- (1) This section applies where a relevant authority make a decision in consequence of which any work is required to be carried out (whether by the authority themselves or by some other person) in accordance with a specification which has been either—
- (a) prepared for the purposes of an invitation issued for the purposes of section 9(4)(a) of the 1980 Act (competitive tendering for construction and maintenance work); or
 - (b) made available for inspection in accordance with a notice published for the purposes of section 7(1) of the 1988 Act (competitive tendering for other functional work).
- (2) Where this section applies, it shall be the duty of the authority making the decision—
- (a) to make arrangements for—
 - (i) a copy of the specification; and
 - (ii) a document containing a summary of the main requirements of the specification,to be kept available, throughout the period during which the work in question is to be carried out, for inspection by members of the public, at all reasonable hours, at the principal office of the authority; and
 - (b) to give such publicity to those arrangements as they think sufficient for drawing the attention of members of the public who may be interested to the fact that the specification and that document are so available.
- (3) In this section “relevant authority” means any body which is a local authority or development body within the meaning of Part III of the 1980 Act or a defined authority within the meaning of Part I of the 1988 Act.

11 Amendments of competition provisions

Part III of the 1980 Act and Part I of the 1988 Act (competition provisions) shall have effect with the amendments specified in Schedule 1 to this Act.