

cc B/L



2 MARSHAM STREET  
LONDON SW1P 3EB  
01-212 3434

My ref:

Your ref:

The Rt Hon The Viscount Whitelaw CH MC  
Lord President of the Council  
Privy Council Office  
Whitehall  
LONDON  
SW1

29 June 1987

NBM

Dear Willie

NON-COMMERCIAL CONDITIONS IN LOCAL AUTHORITY CONTRACTS: LOCAL LABOUR

In my letter of 24 June, <sup>at flap</sup> informing you that I had not found it possible to include a form of words signalling the Government's commitment to the use of local labour in inner city projects in the Local Government Bill, I promised to circulate to colleagues the draft of a statement on this issue for inclusion in my speech on Second Reading of the Bill.

I now attach the draft. On present plans, Second Reading will take place in the week beginning 6 July and I will therefore assume that colleagues are content with what I propose to say unless I hear to the contrary by Friday 3 July.

I am sending copies of this letter to the Prime Minister, Kenneth Clarke, other members of H, the Foreign Secretary, the Attorney General, First Parliamentary Counsel and Sir Robert Armstrong.

NICHOLAS RIDLEY

DRAFT PARAGRAPHS ON LOCAL LABOUR FOR INCLUSION IN SECOND READING  
SPEECH ON LOCAL GOVERNMENT BILL

When I announced in October last year that the Government would bring forward legislation to stop local authorities imposing political conditions in their contracts with businesses, I hoped that it would be possible to include a special provision in the legislation to allow the promotion of employment prospects of local labour in the inner cities. Hon Members will note that Part II of the Bill does not contain such a provision, since it has subsequently become clear that EC law on public works and supply contracts rules out the introduction of that type of measure into the contractual process.

The absence of this provision from the Bill should not be interpreted in any way as weakening this Government's resolve to ensure that inner city residents share fully in the benefits flowing from new investment and new initiatives in the inner cities.

Our research has shown, for example, that employment growth in inner city firms assisted through the urban programme has been well targeted on inner city residents. The jobs did not require especially high skills. The majority needed only on-the-job training. On average, 84% of new employees lived locally, and the proportion from ethnic minorities was equal to or greater than the proportion of such residents in the district.

But certain jobs, in construction for example, do need particular skills. To require that a quota of jobs must be given to local residents, with the rise in costs and the fall in standards which that entails, is clearly impractical as well as unlawful. Proper training is an essential component of many inner-city projects. The Manpower Services Commission are reshaping their efforts in favour of the unskilled and unemployed in the inner cities. They are working with my Department, for example, to provide Community

Programme places for the long term unemployed in refurbishment schemes on run down estates.

The Local Task Forces of my Rt Hon Friends' Inner Cities Initiative are working with local firms to target their recruitment to inner city residents, and ensure that local training is well matched to employers' needs. The aim is to motivate and raise skill levels so that local people are better equipped to compete for jobs, rather than to suspend competition on their behalf.

These examples demonstrate our commitment. I and my colleagues charged with the responsibility for regenerating our inner city areas will continue to make sure that our programmes are designed to encourage firms to recruit local labour, and to ensure that that labour is better trained and motivated to grasp the opportunities thus created.

LOCAL GOVT. RELATIONS BETWEEN CENTRAL  
& LOCAL GOV.  
Pt 32

29  
3/1/1987

CONFIDENTIAL



2 PPS

*ceBq*

FCS/87/145

SECRETARY OF STATE FOR THE ENVIRONMENT

*NBM*

Non-Commercial Conditions in Local Authority

Contracts: Local Labour

1. Thank you for copying to me your letter of 29 June to Willie Whitelaw to which you attached a draft of the statement you propose to make at Second Reading indicating our commitment to the use of local labour in inner city projects.

2. I agree with the statement. However, I do not think we should give the House the impression that the two EC directives in question are merely an obstacle to our freedom of action. I would therefore suggest the final sentence of the first paragraph should be redrafted as follows:

"Hon Members will note that Part II of the Bill does not contain such a provision. This is because it has subsequently become clear that EC rules designed to ensure equal conditions of competition for public works and supply contracts - rules which the government fully supports - do not permit the introduction of that type of measure into the contractual process."

/3.

CONFIDENTIAL

CONFIDENTIAL



3. I am sending copies of this minute to the Prime Minister, Kenneth Clarke, other members of H, the Attorney General, First Parliamentary Counsel and Sir Robert Armstrong.

A handwritten signature in dark ink, consisting of several sharp, angular strokes that form a stylized representation of the name 'Geoffrey Howe'.

(GEOFFREY HOWE)

Foreign and Commonwealth Office

6 July 1987

CONFIDENTIAL

Local Court  
Relations

OT 32





**PAYMASTER GENERAL**

Treasury Chambers, Parliament Street, SW1P 3AG

Michael Eland Esq  
Private Secretary to  
The Rt Hon The Viscount Whitelaw CH MC  
Lord President of the Council  
Privy Council Office  
Whitehall  
LONDON SW1

*NBP*

3 July 1987

*Dear Mike*

**NON-COMMERCIAL CONDITIONS IN LOCAL AUTHORITY CONTRACTS: LOCAL LABOUR**

The Paymaster General has seen the Secretary of State for the Environment's letter of 29 June to the Lord President, which covered a draft statement on the use of local labour in inner-city projects.

The Paymaster thinks that the draft fully meets the Treasury's concern that the Government avoids infringing EC law on public works, and he is content with it.

I am copying this letter to David Norgrove (No 10), the Private Secretaries to the members of H, Lyn Parker (FCO), Michael Saunders (Law Officers' Department); and to First Parliamentary Counsel and Trevor Woolley (Cabinet Office).

*Yours ever*

*Sime*

**S P JUDGE**  
Private Secretary



LOCAL GOVT

RELATIONS

PT 32



CCBS



DEPARTMENT OF TRADE AND INDUSTRY

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THE CHANCELLOR OF THE DUCHY OF LANCASTER  
AND MINISTER OF TRADE AND INDUSTRY

THE RT HON KENNETH CLARKE QC, MP

Rt Hon Nicholas Ridley MP  
Secretary of State  
Department of the Environment  
2 Marsham Street  
LONDON  
SW1P 3EB

3 July 1987

✓ BSM

Dear Secretary of State,

NON-COMMERCIAL CONDITIONS IN LOCAL AUTHORITY CONTRACTS: LOCAL  
LABOUR

Your letter of 29 June to the Lord President contained draft paragraphs for your Second Reading Speech on the Local Government Bill.

I am very content with the explanation set out in your proposed remarks and attach only a redraft of the fifth paragraph which refers to the inner city task forces.

I am sending copies of this letter to the recipients of yours.

Yours sincerely,

Ps/ *Alastair May*

KENNETH CLARKE  
(approved by the Chancellor  
and signed in his absence)

JYLAAS



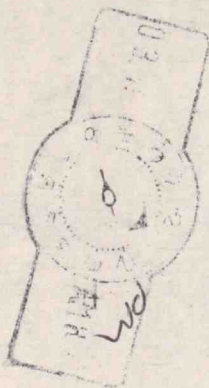
DRAFT PARAGRAPHS ON LOCAL LABOUR - NEW PARAGRAPH TO REPLACE  
PARAGRAPH FIVE

Within the Inner Cities Initiative which is being steered by my Rt Hon Friends, the Government's task forces are working to encourage firms to recruit more inner city residents, to ensure that training is well-matched to employers needs and to develop the capacity of small local firms to win contracts. Our aim is to motivate and raise skill levels so that local people are better equipped to compete for jobs and employers find that it makes sound sense to hire them. We have made very encouraging progress in a number of schemes sponsored by our task forces.

LOCAL GOVT

RELATIONS

PT 32



cc 86



2 MARSHAM STREET  
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My ref:

Your ref:

The Rt Hon The Viscount Whitelaw CH MC  
Lord President of the Council  
Privy Council Office  
Whitehall  
LONDON  
SW1

*Prime Minister 2*

*The agreement between 24 June 1987*

*Mr Clarke and Mr Ridley on this point has attracted some publicity. DRS 24/6*

Dear Lord President,

NON-COMMERCIAL CONDITIONS IN LOCAL AUTHORITY CONTRACTS: LOCAL LABOUR

*attached*

When we discussed my proposals on non-commercial conditions in local authority contracts on 22 June I was asked to consider urgently, in consultation with Kenneth Clarke and Patrick Mayhew, whether it would be possible to include in the Bill a form of words signalling the Government's commitment to the use of local labour in inner city projects.

As I indicated to the Committee, I had hoped that it would be possible to include a clause in the Bill which would empower Kenneth to pay grants to contractors to cover the additional costs that they incurred in employing local labour on projects which they had contracted to carry out for local authorities. The Law Officers have advised, however, that such a scheme would be notifiable to the European Commission under Articles 92 and 93 of the Treaty of Rome. Provisions to introduce it could not, therefore, safely be included in the Bill unless and until the scheme had been cleared with the Commission. My officials have explained all this to Kenneth's.

Clearly there is not time to do this before introduction of the Bill. If Kenneth can work up such a scheme and secure the Commission's agreement to it, then I would be willing to add appropriate provisions to the Bill during its passage, if they were within scope.

I can see no other way of signalling the Government's commitment on the face of the Bill. I will, of course, make a clear statement of the Government's commitment to securing the local labour objective at second reading, as the Committee agreed. I will circulate a draft of that statement as early as possible next week.

I am sending copies of this letter to the Prime Minister, Kenneth Clarke, other members of H, the Foreign Secretary, the Attorney General, First Parliamentary Counsel and Sir Robert Armstrong.

*Yours sincerely*  
*Nicholas Ridley*  
*PP.*

NICHOLAS RIDLEY

*(Approved in draft by the Secretary of State and signed in his absence)*



DRW.

cc/4



QUEEN ANNE'S GATE LONDON SW1H 9AT

19 June 1987

*Dear Secretary of State*

*NBR*

LOCAL GOVERNMENT LEGISLATION AND NON COMMERCIAL CONTRACT CONDITIONS

*FILE WITH DN*

I have seen your exchanges with ~~Kenneth~~ Clarke over the implications of the provisions you propose to include in the Local Government Bill on non commercial contract conditions for local labour. I share Kenneth Clarke's concern and am glad that we are to have the opportunity on Monday to discuss the proposals in H Committee.

The provisions are also of considerable importance to me in relation to my responsibilities for equal opportunities and in particular the duty which section 71 of the Race Relations Act 1976 imposes on local authorities. I share your concern at the misuse of contract powers by extreme local authorities, sometimes under the guise of anti-racist policies; but I am also concerned to ensure that we do not undermine constructive efforts to promote equal opportunities.

I am grateful that the provisions you propose make explicit provision to safeguard action by local authorities against unlawful racial discrimination. There is, however, no safeguard to protect action they may wish to take to fulfil the other limb of their section 71 duty, namely to promote equality of opportunity and good race relations. I recognise the risks which we would run with a wider exemption. But I fear that the damage done by not protecting action taken in pursuance of the whole of section 71 could be greater. I hope therefore that we may examine this aspect of your proposals at Monday's meeting. I thought that I should let you and colleagues know of my concern in advance.

So far as the other provisions of the Bill, as listed in your letter of 17 June to Willie Whitelaw are concerned, I note that the Receiver for the Metropolitan Police District is brought within its scope. I am writing to you separately about this.

I am sending copies to the recipients of your letter.

*Your sincerely  
William Whitelaw*

Approved by the Home Secretary  
and signed in his absence

LOCAL GOVT Relations PT32



CC2C



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THE CHANCELLOR OF THE DUCHY OF LANCASTER  
AND MINISTER OF TRADE AND INDUSTRY  
  
THE RT HON KENNETH CLARKE QC, MP

The Rt Hon The Viscount Whitelaw CH MC  
Lord President of the Council  
Privy Council Office  
Whitehall  
LONDON  
SW1

19 June 1987

*NBM*

*Dear Willie,*

**NON-COMMERCIAL CONDITIONS IN LOCAL AUTHORITY CONTRACTS**

Nicholas Ridley's letter of <sup>attap</sup> 17 June records continuing disagreement on one small aspect of his proposed Bill, namely his insistence that the "composition of the workforce" be listed as a non-commercial matter in draft clause 17(5)(a).

Colleagues will recall that we have agreed that we should ensure that public spending in the inner cities is more effectively targeted in its job creation aspects on the people who actually live there. I am firmly of the view that we can find ways of meeting our policy objectives, to which Nick subscribes, without being attacked for contravention of European directives. However it was never the purpose of this legislation to bring into effect EC directives. The legislation is intended to stamp out political abuse of the contract process. The legislation as drafted without the three words that I object to will still achieve that objective.

Nicholas claims that the exclusion of "the composition of" opens up potential loopholes. I do not accept the validity of any of his examples. Questionnaires about the composition of the workforce will still be sent out on the basis that they are needed to monitor compliance with the Race Relations Act, Equal Opportunities Act and quotas for

EC5AWO





disabled persons. The other examples he gives are so outrageous that they would plainly be illegal on "Wednesbury principles" as well as EC law. In any event, if in due course it becomes apparent that attempts are being made to take advantage of the alleged loophole, the Secretary of State for the Environment will be able to close it using his order making power under clause 18(i).

The only practical effect of the three words I propose should be omitted will be to frustrate one aspect of the Government's own inner city policy.

For those reasons I believe that we should ask Nick to make the small amendment I have asked for in draft clause 17(5)(a).

I am copying this to the recipients of Nick's letter.

A handwritten signature in black ink, consisting of a large, stylized 'K' followed by 'Clarke' in a cursive script. To the right of the signature is a large, handwritten letter 'L' with a dot above it.

KENNETH CLARKE

LOCAL GOVT Relations PT32





SCOTTISH OFFICE  
WHITEHALL, LONDON SW1A 2AU

**CONFIDENTIAL**

The Rt Hon Viscount Whitelaw CH MC  
Lord President of the Council  
Privy Council Office  
Whitehall  
LONDON  
SW1A 2AT

*NBM* . 19 June 1987

*Dear Willie*

NON-COMMERCIAL CONDITIONS IN LOCAL AUTHORITY CONTRACTS *with SN?*

I have seen a copy of Nicholas Ridley's letter of 16 June to you, enclosing a set of draft clauses designed to prohibit non-commercial conditions in local authority contracts.

I am afraid that I shall be unable to attend the meeting of H Committee which has been arranged for Monday 23 June, but I am writing to let you know that I am content with the draft clauses and that I agree with all that Nicholas says in his letter. In particular, I accept his view that we cannot provide for an exemption for local labour conditions of the kind that Kenneth Clarke has been seeking. From the point of view of urban policy, this is of course to be regretted; but the damage which would be caused to the main objectives of these clauses, and the fact that such an exemption would fall foul of EC Directives, seem to me to leave us with no alternative.

Copies of this letter go to the Prime Minister, other members of H, the Foreign Secretary, the Secretary of State for Trade and Industry, the Lord Advocate, the Attorney General, Sir Robert Armstrong and First Parliamentary Counsel.

*Yours ever,*  
*Malcolm Rifkind*

MALCOLM RIFKIND

RCU01726.067



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The Rt Hon Viscount Whitelaw CH MC  
Lord President of the Council  
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My ref:

Your ref:

Prime Minister<sup>2</sup>

16 June 1987

JHS  
16/6.

Dear White

#### NON-COMMERCIAL CONDITIONS IN LOCAL AUTHORITY CONTRACTS

Following consideration of my proposals to prevent local authorities adopting discriminatory practices in relation to contractors (H(86)39 and 43), I was invited to circulate draft clauses and seek confirmation of H Committee's policy approval for their contents in correspondence (H(86)25th).

I now attach the draft clauses and schedule, which have been the subject of wide consultation at official level. Colleagues will recall that such provisions, among others, were dropped before the introduction of last Session's Local Government Bill in order to avoid delay to that Bill; but I am committed to bringing forward appropriate measures at the earliest opportunity, which is the Local Government Bill to be introduced later this month.

You will note that the clauses are now drafted on the basis of specific bans, with a power to add further specific bans by order. Use of this power, which will be subject to affirmative resolution, will enable us to ban new practices local authorities invent to get round the legislation. On reflection, this is a more attractive approach than the original aim of trying to catch all existing abuses, and any conceivable new ones, without affecting acceptable tendering and contract practices. In particular, I should draw colleagues' attention to the following points:

(a) The specific bans are listed in clause 17(5), with definitions of the various terms used in clause 17(8). Our aim is to stop authorities engaging in these non-commercial practices, rather than to encourage aggrieved contractors to challenge authorities which continue to do so. Contractors have been very reluctant to challenge such conditions under existing law, and there is no reason to believe that enactment of these provisions will result in a significant number of legal challenges.

(b) Clause 18(7) and (8) deals with the interaction between the new provisions and race relations legislation. Their effect is to allow authorities to take account of potential contractors' answers to reasonable questions asked in

pursuance of authorities' duty to carry out their functions with due regard to the need to eliminate unlawful racial discrimination. They will, however, stop authorities using the race relations legislation to justify other non-commercial contract practices, such as banning firms with South African links.

(c) The specific bans will not stop authorities taking account of contractors' health and safety records. The Health and Safety Commission has recently approved guidance on managing health and safety in construction, which encourages customers to take full account of health and safety matters in drawing up tender lists. Given this, and the political sensitivity of the construction industry's safety record, I do not think that we could justify legislation which stopped local authorities from taking account of health and safety issues. Since the construction industry was involved in the preparation of the HSE guidance, I would not expect them to argue with this.

(d) Our opponents will see the specific bans - and the ban on related questionnaires in clause 18(9) - as particularly hard-hitting in such areas as pay, apprentice training, etc. There will no doubt be charges of a "cowboy's character", but any concessions other than to local authorities' specific duty under the Race Relations Act would negate the whole purpose of these provisions.

Colleagues will have noted from my recent exchange of correspondence with the Paymaster General that there remains an outstanding issue on the use of 'local labour' conditions. We have firm legal advice that a condition requiring a contractor to employ a proportion of locally recruited labour in his workforce would be in contravention of the EC Public Works and Supplies Directives, and it follows that, despite my willingness in principle, I cannot provide in this legislation for an exemption for such a practice. I trust colleagues will endorse my view that the fact that a desirable aim of our urban policy is frustrated by the terms of certain EC Directives is no reason for abandoning measures which have the most widespread support, both among our backbenchers and in industry as a whole.

I would be grateful, therefore, for confirmation that the attached provisions have policy approval for inclusion in the forthcoming Local Government Bill. As it is the intention on present plans for the Bill to be considered in L Committee on 23 June, such confirmation is needed as soon as possible.

I am copying this letter and enclosures to the Prime Minister, other members of H, the Foreign Secretary, the Secretary of State for Trade and Industry, the Attorney General, Sir Robert Armstrong and First Parliamentary Counsel.

*Nicholas Ridley*

NICHOLAS RIDLEY

## PART II

## PUBLIC SUPPLY OR WORKS CONTRACTS

17.--(1) It is the duty of every public authority to which this section applies, in exercising in relation to its public supply or works contracts, any proposed or any subsisting such contract, as the case may be, any function regulated by this section to exercise that function without reference to matters which are non-commercial matters for the purposes of this section.

Local and other public authority contracts: exclusion of non-commercial considerations.

10 (2) The public authorities to which this section applies are those specified in Schedule 2 to this Act.

(3) The contracts which are public supply or works contracts for the purposes of this section are contracts for the supply of goods or materials, for the supply of services or for the execution of works; but this section does not apply in relation to contracts entered into before the commencement of this section.

(4) The functions regulated by this section are-

20 (a) the inclusion of persons in or the exclusion of persons from-

(i) any list of persons approved for the purposes of public supply or works contracts with the authority, or

25 (ii) any list of persons from whom tenders for such contracts may be invited;

(b) in relation to a proposed public supply or works contract with the authority-

30 (i) the inclusion of persons in or the exclusion of persons from the group of persons from whom tenders are invited,

(ii) the accepting or not accepting the submission of tenders for the contract,

(iii) the selecting the person with whom to enter into the contract, or

35 (iv) the giving or withholding approval for, or the selection or nomination of, persons to be sub-contractors for the purposes of the contract; and

40 (c) in relation to a subsisting public supply or works contract with the authority--

(i) the giving or withholding approval for, or the selection or nomination of, persons to be sub-contractors for the purposes of the contract, or

45 (ii) the termination of the contract.

(5) The following matters are non-commercial matters as regards the public supply or works contracts of a public authority, any proposed or any subsisting such contract, as

## Part II

the case may be, that is to say-

- (a) the terms and conditions of employment by contractors of their workers or the composition of, the arrangements for the promotion, transfer or training of or the other opportunities afforded to, their workforces; 5
- (b) whether the terms on which contractors contract with their sub-contractors constitute, in the case of contracts with individuals, contracts for the provision by them as self-employed persons of their services only; 10
- (c) any involvement of the business activities or interests of contractors with irrelevant fields of Government policy;
- (d) the conduct on the part of contractors or workers of trade disputes to which contractors are parties or any involvement of the business activities of contractors in trade disputes between other persons; 15
- (e) the country or territory of origin of supplies to, or the location in any country or territory of the business activities or interests of, contractors or associated bodies; 20
- (f) any political, industrial or sectarian affiliations or interests of contractors or their directors, partners or employees; 25
- (g) financial support or lack of financial support by contractors for any institution supported by the authority;
- (h) use or non-use by contractors of technical or professional services provided by the authority under the Building Act 1984 or the Building (Scotland) Act 1959. 30

1984 c.55.  
1959 c.24.

(6) Where any matter referable to a contractor would, as a matter specified in subsection (5) above, be a non-commercial matter in relation to him the corresponding matter referable to a sub-contractor of his is also, in relation to the contractor, a non-commercial matter for the purposes of this section; and so with a supplier or customer of the contractor. 35

(7) Where any matter referable to an associated body of a contractor would, as a matter specified in subsection (5) above, be a non-commercial matter in relation to that contractor, the corresponding matter referable to the suppliers or customers of an associated body of the contractor is also, in relation to the contractor, a non-commercial matter for the purposes of this section. 40

(8) In this section-

"approved list" means such a list as is mentioned in subsection (4)(a) above;

"associated body", in relation to a contractor, means any company which (within the meaning of the Companies Act 1985) is the contractor's holding company or subsidiary or is a subsidiary of the contractor's holding company; 50

1985 c. 6.

"business" includes any trade or profession;

5 "business activities" and "business interests" in relation to a contractor or other person, mean respectively any activities comprised in, or any investments employed in or attributable to, the carrying on of his business and "activity" includes receiving the benefit of the performance of any contract;

10 "contractor", except in relation to a subsisting contract, means a "potential contractor", that is to say-

(a) in relation to functions as respects an approved list, any person who is or seeks to be included in the list; and

15 (b) in relation to functions as respects a proposed public supply or works contract, any person who is or seeks to be included in the group of persons from whom tenders are invited or who seeks to submit a tender for or enter into the proposed contract, as the case may be;

20 "exclusion" includes removal;

25 "Government policy" falls within "irrelevant fields" for the purposes of this section if it concerns matters of defence or foreign or Commonwealth policy and "involve", as regards business activities and any such field of policy, includes the supply of goods or materials or services to, or the execution of works for, any authority or person having

30 functions or carrying on business in that field and, as regards business interests and any such field of policy, includes investment in any authority or person whose business activities are so involved;

35 "political, industrial or sectarian affiliations or interests" means actual or potential membership of, or actual or potential support for, respectively, any political party, any employers' association or trade union and any society, fraternity or other association;

40 "suppliers or customers" and "sub-contractors" includes prospective suppliers or customers and sub-contractors; and "supplier", in relation to a contractor, includes any person who in the course of business, supplies him with services or facilities

45 of any description for the purposes of his business;

"trade dispute" has the same meaning as in the Trade Union and Labour Relations Act 1974 and "involve", as regards business activities and a trade dispute, includes the supply of goods or materials or services to, or the execution of works for, any party to the dispute, any other person affected by the dispute, or any authority concerned with the enforcement of law and order in relation to the dispute;

50 and "employers' association" and "trade union" have the same meaning as in that Act.

1974 c. 52.



Part II

(9) This section is subject to section 18(8) below.

Provisions supplementary to or consequential on section 17.

18.--(1) The Secretary of State may, by order made by statutory instrument, specify as a non-commercial matter for the purposes of section 17 above, any other matter which appears to him to be irrelevant to the commercial purposes of public supply or works contracts of any description.

5

(2) The power conferred by subsection (1) above includes power to amend any definition in section 17(8) above of an expression used in any paragraph of section 17(5) above without making any other provision.

10

(3) No order under subsection (1) above shall be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.

(4) Section 17 above applies to a public authority where, in discharging functions regulated by that section, the authority is, as well as where it is not, acting on behalf of a Minister of the Crown.

15

(5) The duty imposed by section 17(1) above does not create a criminal offence but--

(a) in proceedings for judicial review, the persons who have a sufficient interest or, in Scotland, title and interest in the matter shall include any potential contractor or, in the case of a contract which has been made, former potential contractor (or in any case any body representing contractors), as such; and

20

(b) a failure to comply with it is actionable by any person who, in consequence, suffers loss or damage.

25

(6) Nothing in section 17 above implies that the exercise of any function regulated by that section may not be impugned, in proceedings for judicial review, on the ground that it was exercised by reference to other matters than those which are non-commercial matters for the purposes of that section.

30

1976 c. 74:

(7) Except to the extent permitted by subsection (8) below, section 71 of the Race Relations Act 1976 (general duty of local authorities to promote good race relations by the exercise of their functions) shall not require or authorise a local authority to exercise any function regulated by section 17 above by reference to a non-commercial matter.

35

40

(8) Nothing in section 17 above shall preclude a local authority, in pursuance of the said section 71, from doing, by reference to a non-commercial matter, any act in the exercise of a function regulated by section 17 above if the matter falls within paragraph (a) (but no other paragraph) of subsection (5) of that section and the doing of the act is reasonably necessary to secure that the function is carried out with due regard to the need to eliminate unlawful racial discrimination.

45

(9) If a public authority, in relation to public supply or works contracts or any proposed such contract, as the case may be--

- 5 (a) asks a question of any potential contractor relating to any non-commercial matter other than a question consideration of the answer to which is permitted by subsection (8) above, or
- 10 (b) submits to any potential contractor a draft contract or draft tender for a contract which includes terms or provisions relating to any non-commercial matter other than a term or provision the inclusion of which in the contract is permitted by subsection (8) above,

15 the authority shall be treated, for the purposes of section 17 above, as exercising functions regulated by that section by reference to non-commercial matters.

(10) In consequence of section 17 above, the following provisions (which require local authorities to secure the insertion of fair wages clauses in all housing contracts),

20 namely--

(a) section 204 of the Housing (Scotland) Act 1959, and

(b) section 52(a) of the Housing Act 1985,

shall cease to have effect.

25 (11) Expressions used in this section and section 17 above have the same meaning in this section as in that section.

30 19.--(1) Where a public authority exercises a function regulated by section 17 above by making, in relation to any person, a decision to which this section applies, it shall be the duty of the authority forthwith to notify that person of the decision and, if that person so requests in writing within the period of 15 days beginning with the date of the notice, to furnish him with a written statement of the reasons for the decision.

Duty of public authorities to give reasons for certain decisions within s.17.

35 (2) This section applies to the following decisions in relation to any person, namely--

(a) in relation to an approved list, a decision to exclude him from the list,

40 (b) in relation to a proposed public supply or works contract--

(i) where he has asked to be invited to tender for the contract, a decision not to invite him to tender,

45 (ii) a decision not to accept the submission by him of a tender for the contract,

(iii) where he has submitted a tender for the contract, a decision not to enter into the contract with him, or

50 (iv) a decision to withhold approval for, or to select or nominate, persons to be sub-contractors for the purposes of the contract,

## Part II

or

(c) in relation to a subsisting public supply or works contract with him--

(i) a decision to withhold approval for, or to select or nominate, persons to be sub-contractors for the purposes of the contract, or

(ii) a decision to terminate the contract.

(3) A statement of reasons under subsection (1) above shall be sent to the persons requesting it within the period of 15 days beginning with the date of the request.

(4) The Secretary of State may by order amend subsection (1) or (3) above so as to substitute for the period specified in that subsection such other period as he thinks fit and such an order may make different amendments of subsections (1) and (3).

(5) The power to make an order under subsection (4) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(6) Expressions used in this section and section 17 above have the same meaning in this section as in that section.

Transitional  
duty of public  
authorities as  
regards  
existing lists.

20.--(1) It is the duty of a public authority which, at the commencement of this section, maintains an approved list--

(a) to consider whether persons have been included in or excluded from the list by reference to non-commercial matters, and

(b) if it appears to the authority that that is the case to compile the list afresh in accordance with subsections (3) to (5) below.

(2) Persons shall be treated by a public authority as having been excluded from a list by reference to non-commercial matters if, in relation to the list, the authority has--

(a) circulated to potential contractors questionnaires including questions relating to non-commercial matters, or

(b) notified potential contractors of its intention to have regard to non-commercial matters, or

(c) issued statements of policy framed by reference to non-commercial matters.

(3) The duty of an authority to compile afresh an approved list shall be discharged as follows--

(a) the authority shall publish notice of its intention to compile the list afresh and (by the notice) invite persons to apply within a specified period to be included in the list; and

(b) at the end of that period the authority shall proceed to compile the list afresh from among the applicants in accordance with the duty imposed by section 17 above.

(4) Publication by an authority of the notice required by subsection (3) above shall be effected by causing the notice to be published--

- 5 (a) in at least one newspaper circulating in the authority's area or, if the extent of the authority's functions so require, in at least one national newspaper; and
- 10 (b) in at least one newspaper or journal circulating among such persons as undertake contracts of the description to which the list relates.

(5) The period specified in the notice under subsection (3) above as the period within which applications are to be made shall not be shorter than the period of 28 days beginning with the date of publication of the notice.

- 15 (6) The duty imposed by this section shall be discharged by a public authority as soon as is reasonably practicable after the commencement of this section and in any event within the period of three months.

- 20 (7) This section does not create a criminal offence but paragraph (a) of section 18(5) above applies for the purposes of the duty imposed by this section as it applies for the purposes of the duty imposed by section 17(1) above.

(8) Expressions used in this section and section 17 above have the same meaning in this section as in that section.

- 25 21.--(1) A public authority which maintains an approved list shall not require a person to pay any sum as a condition of his inclusion or continued inclusion in the list or of his being considered for such inclusion.

Exclusion of charges for inclusion in approved list.

- 30 (2) Subsection (1) above does not create an offence but a contravention of it is actionable by the person seeking to be included or retained in the list.

(3) Expressions used in this section and section 17 above have the same meaning in this section as in that section.

- 35 22. Sections 17 to 21 above shall come into force at the end of the period of 14 days beginning with the day on which this Act is passed.

Commencement.

## SCHEDULE 2

Section 17(2).

PUBLIC SUPPLY OR WORKS CONTRACTS: THE PUBLIC  
AUTHORITIESLocal authorities

- 5 A local authority.  
The Common Council of the City of London.  
A joint authority established by Part IV of the 1985 Act.  
The Inner London Education Authority.
- 10 A joint committee or body corporate which discharges functions which would otherwise fall to be discharged by two or more of the above-mentioned bodies.
- 15 A residuary body established by Part VII of the 1985 Act.  
An authority established by an order under section 10 of the 1985 Act.  
A joint board or joint committee within the meaning of the Local Government (Scotland) Act 1973. 1973 c. 65.

20 Development bodies

- An urban development corporation established by an order under section 135 of the 1980 Act.
- 25 A development corporation established by an order made or treated as if made under section 3 of the New Towns Act 1981 or section 2 of the New Towns (Scotland) Act 1968. 1981 c. 64.  
1968 c. 16.
- The Commission for the New Towns.  
The Broads Authority.  
The Central Scotland Water Development Board.
- 30 The Development Board for Rural Wales.  
The Lake District Special Planning Board.  
The Peak Park Joint Planning Board.  
The Scottish Special Housing Association.

Miscellaneous

- 35 The Receiver for the Metropolitan Police District.  
A Passenger Transport Executive, that is to say, any body constituted as such an Executive for a passenger transport area for the purposes of Part II of the Transport Act 1968. 1968 c. 73
- 40 A probation and after-care committee, that is to say any body constituted as such a committee for a

Sch. 2  
1973 c. 62.

probation and after-care area by paragraph 2(1) of Schedule 3 to the Powers of Criminal Courts Act 1973.

Interpretation

In this Schedule-

"local authority" means-

(a) in relation to England and Wales, a local authority within the meaning of the 1972 Act; and

(b) in relation to Scotland, a regional, islands or district council;

and includes any committee upon whom functions are imposed or conferred by any enactment;

1972 c. 70.

"the 1972 Act" means the Local Government Act 1972;

1980 c. 65.

"the 1980 Act" means the Local Government, Planning and Land Act 1980;

1985 c. 51.

"the 1985 Act" means the Local Government Act 1985.

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