

(4) Nothing in this section, or in any agreement made thereunder, shall be construed as restricting the exercise, in relation to land which is the subject of any such agreement, of any powers exercisable by the Minister, the Board or the planning authority under this Act, so long as those powers are not exercised so as to contravene materially the provisions of the development plan, or as requiring the exercise of any such powers so as to contravene materially those provisions. Pt.III S.47

(5) Particulars of an agreement made under this section shall be entered in the register.

**48.**—(1) A planning authority may, when granting a permission under *section 34*, include conditions for requiring the payment of a contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority and that is provided, or that it is intended will be provided, by or on behalf of a local authority (regardless of other sources of funding for the infrastructure and facilities). Development contributions.

(2) (a) Subject to *paragraph (c)*, the basis for the determination of a contribution under *subsection (1)* shall be set out in a development contribution scheme made under this section, and a planning authority may make one or more schemes in respect of different parts of its functional area.

(b) A scheme may make provision for payment of different contributions in respect of different classes or descriptions of development.

(c) A planning authority may, in addition to the terms of a scheme, require the payment of a special contribution in respect of a particular development where specific exceptional costs not covered by a scheme are incurred by any local authority in respect of public infrastructure and facilities which benefit the proposed development.

(3) (a) A scheme shall state the basis for determining the contributions to be paid in respect of public infrastructure and facilities, in accordance with the terms of the scheme.

(b) In stating the basis for determining the contributions in accordance with *paragraph (a)*, the scheme shall indicate the contribution to be paid in respect of the different classes of public infrastructure and facilities which are provided or to be provided by any local authority and the planning authority shall have regard to the actual estimated cost of providing the classes of public infrastructure and facilities, except that any benefit which accrues in respect of existing development may not be included in any such determination.

(c) A scheme may allow for the payment of a reduced contribution or no contribution in certain circumstances, in accordance with the provisions of the scheme.

(4) Where a planning authority proposes to make a scheme under this section, it shall publish in one or more newspapers circulating in the area to which the scheme relates, a notice—

(a) stating that a draft scheme has been prepared,

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- (b) giving details of the proposed contributions under the draft scheme,
  - (c) indicating the times at which, the period (which shall be not less than 6 weeks) during which, and the place where, a copy of the draft scheme may be inspected, and
  - (d) stating that submissions or observations may be made in writing to the planning authority in relation to the draft scheme, before the end of the period for inspection.
- (5) (a) In addition to the requirements of *subsection (4)*, a planning authority shall send a copy of the draft scheme to the Minister.
- (b) The Minister may make recommendations to the planning authority regarding the terms of the draft scheme, within 6 weeks of being sent the scheme.
- (6) (a) Not later than 4 weeks after the expiration of the period for making submissions or observations under *subsection (4)*, the manager of a planning authority shall prepare a report on any submissions or observations received under that subsection, and submit the report to the members of the authority for their consideration.
- (b) A report under *paragraph (a)* shall—
- (i) list the persons or bodies who made submissions or observations under this section,
  - (ii) summarise the issues raised by the persons or bodies in the submissions or observations, and
  - (iii) give the response of the manager to the issues raised, taking account of the proper planning and sustainable development of the area.
- (7) The members of the planning authority shall consider the draft scheme and the report of the manager under *subsection (6)*, and shall have regard to any recommendations made by the Minister under *subsection (5)*.
- (8) (a) Following the consideration of the manager's report, and having had regard to any recommendations made by the Minister, the planning authority shall make the scheme, unless it decides, by resolution, to vary or modify the scheme, otherwise than as recommended in the manager's report, or otherwise decides not to make the scheme.
- (b) A resolution under *paragraph (a)* must be passed not later than 6 weeks after receipt of the manager's report.
- (9) (a) Where a planning authority makes a scheme in accordance with *subsection (8)*, the authority shall publish notice of the making, or approving, of the scheme, as the case may be, in at least one newspaper circulating in its area.
- (b) A notice under *paragraph (a)* shall—
- (i) give the date of the decision of the planning authority in respect of the draft scheme,

- (ii) state the nature of the decision, and
  - (iii) contain such other information as may be prescribed.
- (10) (a) Subject to *paragraph (b)*, no appeal shall lie to the Board in relation to a condition requiring a contribution to be paid in accordance with a scheme made under this section.
- (b) An appeal may be brought to the Board where an applicant for permission under *section 34* considers that the terms of the scheme have not been properly applied in respect of any condition laid down by the planning authority.
- (c) Notwithstanding *section 34(11)*, where an appeal is brought in accordance with *paragraph (b)*, and no other appeal of the decision of a planning authority is brought by any other person under *section 37*, the authority shall make the grant of permission as soon as may be after the expiration of the period for the taking of an appeal, provided that the person who takes the appeal in accordance with *paragraph (b)* furnishes to the planning authority security for payment of the full amount of the contribution as specified in the condition.

(11) Where an appeal is brought to the Board in respect of a refusal to grant permission under this Part, and where the Board decides to grant permission, it shall, where appropriate, apply as a condition to the permission the provisions of the contribution scheme for the time being in force in the area of the proposed development.

(12) Where payment of a special contribution is required in accordance with *subsection (2)(c)*, the following provisions shall apply—

- (a) the condition shall specify the particular works carried out, or proposed to be carried out, by any local authority to which the contribution relates,
- (b) where the works in question—
  - (i) are not commenced within 5 years of the date of payment to the authority of the contribution,
  - (ii) have commenced, but have not been completed, within 7 years of the date of payment to the authority of the contribution, or
  - (iii) where the local authority decides not to proceed with the proposed works or part thereof,

the contribution shall, subject to *paragraph (c)*, be refunded to the applicant together with any interest that may have accrued over the period while held by the local authority,

- (c) where under *subparagraph (ii) or (iii) of paragraph (b)*, any local authority has incurred expenditure within the required period in respect of a proportion of the works proposed to be carried out, any refund shall be in proportion to those proposed works which have not been carried out.

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- (13) (a) Notwithstanding *sections 37 and 139*, where an appeal received by the Board after the commencement of this section relates solely to a condition dealing with a special contribution, and no appeal is brought by any other person under *section 37* of the decision of the planning authority under that section, the Board shall not determine the relevant application as if it had been made to it in the first instance, but shall determine only the matters under appeal.
- (b) Notwithstanding *section 34(11)*, where an appeal referred to in *paragraph (a)* is received by the Board, and no appeal is brought by any other person under *section 37*, the authority shall make the grant of permission as soon as may be after the expiration of the period for the taking of an appeal, provided that the person who takes the appeal furnishes to the planning authority, pending the decision of the Board, security for payment of the full amount of the special contribution as specified in the condition referred to in *paragraph (a)*.
- (14) (a) Money accruing to a local authority under this section shall be accounted for in a separate account, and shall only be applied as capital for public infrastructure and facilities.
- (b) A report of a local authority under *section 50* of the Local Government Act, 1991, shall contain details of monies paid or owing to it under this section and shall indicate how such monies paid to it have been expended by any local authority.
- (15) (a) A planning authority may facilitate the phased payment of contributions under this section, and may require the giving of security to ensure payment of contributions.
- (b) Where a contribution is not paid in accordance with the terms of the condition laid down by the planning authority, any outstanding amounts due to the planning authority shall be paid together with interest that may have accrued over the period while withheld by the person required to pay the contribution.
- (c) A planning authority may recover, as a simple contract debt in a court of competent jurisdiction, any contribution or interest due to the planning authority under this section.
- (16) (a) A planning authority shall make a scheme or schemes under this section within 2 years of the commencement of this section.
- (b) Notwithstanding the repeal of any enactment by this Act, the provisions of *section 26* of the Act of 1963, in relation to requiring contributions in respect of expenditure by local authorities on works which facilitate development, shall continue to apply pending the making of a scheme under this section, but shall not apply after two years from the commencement of this section.

(17) In this section—

“public infrastructure and facilities” means—

- (a) the acquisition of land,
- (b) the provision of open spaces, recreational and community facilities and amenities and landscaping works,
- (c) the provision of roads, car parks, car parking places, sewers, waste water and water treatment facilities, drains and watermains,
- (d) the provision of bus corridors and lanes, bus interchange facilities (including car parks for those facilities), infrastructure to facilitate public transport, cycle and pedestrian facilities, and traffic calming measures,
- (e) the refurbishment, upgrading, enlargement or replacement of roads, car parks, car parking places, sewers, waste water and water treatment facilities, drains or watermains, and
- (f) any matters ancillary to *paragraphs (a) to (e)*;

“scheme” means a development contribution scheme made under this section;

“special contribution” means a special contribution referred to in *subsection (2)(c)*.

**49.—(1)** A planning authority may, when granting a permission under *section 34*, include conditions requiring the payment of a contribution in respect of any public infrastructure service or project— Supplementary development contribution schemes.

- (a) specified in a scheme made by the planning authority (hereafter in this section referred to as a “supplementary development contribution scheme”),
- (b) provided or carried out, as may be appropriate, by a planning authority or, pursuant to an agreement entered into by a local authority, any other person, and
- (c) that will benefit the development to which the permission relates when carried out.

(2) (a) The amount, and manner of payment, of a contribution under *subsection (1)* shall be determined in accordance with a supplementary development contribution scheme.

- (b) A supplementary development contribution scheme shall specify—
  - (i) the area or areas within the functional area of the planning authority, and
  - (ii) the public infrastructure project or service,

to which it relates, and more than one such scheme may be made in respect of a particular area.

- (c) A supplementary development contribution scheme may make provision for the payment of different contributions in respect of different classes or descriptions of development.

(3) *Subsections (3), (4), (5), (6), (7), (8), (9), (10), (11) and (15) of section 48* shall apply to a scheme subject to—

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- (a) the modification that references in those subsections to a scheme shall be construed as references to a supplementary development contribution scheme,
  - (b) any other necessary modifications, and
  - (c) the provisions of this section.
- (4) (a) A planning authority may enter into an agreement with any person in relation to the carrying out, or the provision, as may be appropriate, of a public infrastructure project or service.
- (b) Without prejudice to the generality of *paragraph (a)*, an agreement may make provision for—
- (i) the manner in which the service or project is to be provided or carried out, as the case may be, including provision relating to construction or maintenance of any infrastructure or operation of any service or facility,
  - (ii) arrangements regarding the financing of the project or service and the manner in which contributions paid or owed to a planning authority pursuant to a condition under *subsection (1)* may be applied in respect of that project or service,
  - (iii) the entry into such further agreements as may be necessary with any other person regarding the financing and provision of such service or carrying out of such project,
  - (iv) the entry into force, duration and monitoring of the agreement (including the resolution of disputes).
- (5) A planning authority shall not, pursuant to a condition under *subsection (1)*, require the payment of a contribution in respect of a public infrastructure project or service where the person concerned has made a contribution under *section 48* in respect of public infrastructure and facilities of which the said public infrastructure project or service constituted a part.
- (6) A planning authority may, at any time, by resolution, amend a supplementary development contribution scheme for the purpose of modifying the manner of determining a contribution pursuant to a condition under *subsection (1)* where the cost of carrying out or providing, as the case may be, the public infrastructure project or service is less than the cost that was estimated when the planning authority first determined the amount of the contribution.
- (7) In this section, “public infrastructure project or service” means—
- (a) the provision of particular rail, light rail or other public transport infrastructure, including car parks and other ancillary development,
  - (b) the provision of particular new roads,
  - (c) the provision of particular new sewers, waste, water and water treatment facilities, drains or watermains and ancillary infrastructure.