

Draft Order laid before Parliament under section 77(2) of the Deregulation and Contracting Out Act 1994, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2004 No. xxx

CONTRACTING OUT, ENGLAND AND WALES

The Local Authorities (Contracting Out of BID Levy Billing, Collection and Enforcement Functions) Order 2004

Made - - - - *xxx*

Coming into force in accordance with article 1

The First Secretary of State, in exercise of the powers conferred by sections 70(2) and (4) and 77(1) of, and paragraph 3 of Schedule 16 to, the Deregulation and Contracting Out Act 1994⁽¹⁾, after consultation with the representatives of local government appearing to him to be appropriate, hereby makes the following Order, a draft of which has been laid before, and approved by a resolution of, each House of Parliament:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Local Authorities (Contracting Out of BID Levy Billing, Collection and Enforcement Functions) Order 2004 and shall come into force on the day after the day on which it is made.

(2) In this Order—

“the 1989 Regulations” means the Non-Domestic Rating (Collection and Enforcement)(Local Lists) Regulations 1989⁽²⁾ as applied with modifications by the Business Improvement Districts (England) Regulations 2004⁽³⁾;

“the 2003 Act” means the Local Government Act 2003⁽⁴⁾;

“the amount payable” for a chargeable period or part of a chargeable period in relation to a particular person, a relevant billing authority and a hereditament means—

(a) the amount that person is liable to pay to the authority as regards the hereditament in respect of the period or part under section 46 of the 2003 Act by virtue of that person falling within the description of persons liable to BID levy in the BID arrangements; or

(1) 1994 c.40. Section 71(3) (functions excluded from sections 69 and 70) was amended by paragraph 59 of Schedule 7 to the Local Government Act 2003 (c.26).

(2) S.I. 1989/1058; amendments are made by S.I. 1990/145, 1991/141, 1991/1127, 1992/474, 1992/1512, 1993/774, 1993/894, 1993/1493, 1995/212 and 1998/3089.

(3) S.I. 2004/2443.

(4) 2003 c.26.

- (b) where an amount falls to be credited by the authority against that person's liability in respect of the period or part, the amount (if any) by which the amount referred to in subparagraph (a) exceeds the amount falling to be so credited;
- “BID” means a business improvement district (which has the meaning given by section 41 of the 2003 Act);
- “BID arrangements” has the meaning given by section 41 of the 2003 Act;
- “BID levy” has the meaning given by section 41 of the 2003 Act;
- “billing authority” has the meaning given by section 59 of the 2003 Act;
- “chargeable period” has the meaning given by section 45 of the 2003 Act;
- “contractor” means a person to whom an authorisation is given by virtue of this Order, and includes the employees of that person;
- “debtor”, except in article 20, has the meaning given in regulation 10 of the 1989 Regulations;
- “demand notice” has the meaning given in the Business Improvement Districts (England) Regulations 2004;
- “hereditament” is anything which is, or is treated as being, a hereditament by virtue of the provisions of or under section 64 of the Local Government Finance Act 1988(5); and
- “liability order” has the meaning given in regulation 10 of the 1989 Regulations.

PART 1

CONTRACTING OUT

Functions of billing authorities

2. The functions of a billing authority conferred by or under—
- (a) Part 4 of the 2003 Act; or
 - (b) regulations under section 48 of the 2003 Act,

in relation to the imposition, administration, collection, recovery and application of BID levy may, to the extent provided for in this Part and subject to the provisions of Part 2 and article 20, be exercised by such contractor as may be authorised to exercise them by the billing authority whose functions they are.

Notices

3. Where a contractor is authorised under this Part to serve any notice which is required or authorised by the 1989 Regulations to be served on any person, the contractor may also be authorised—
- (a) subject to articles 13 and 14, to determine the form and the manner of service of the notice;
 - (b) to determine any period which is required or authorised by the 1989 Regulations to be specified in the notice; and
 - (c) where the notice requires the person on whom the notice is served to make a payment, to accept an amount paid in compliance with the notice.

(5) 1988 c.41.

Demand notices and payments of BID levy

4.—(1) For the purposes of Part II of the 1989 Regulations (billing), a billing authority may authorise a contractor to identify the persons who are liable for BID levy, and to identify those hereditaments with respect to which there would at a particular time be more than one person who is liable for the BID levy.

(2) A billing authority may authorise a contractor to prepare and serve demand notices and any further notice which is to be treated under the 1989 Regulations as if it were a demand notice and, where appropriate for those purposes, to exercise the functions—

- (a) of determining whether any person falls within the description of person liable for BID levy (as set out in the BID arrangements) with respect to any hereditament;
- (b) where a person is liable for BID levy of the authority as regards more than one hereditament, of serving a single demand notice in relation to the amounts payable with respect to all, or any two or more, of those hereditaments;
- (c) of estimating or calculating the amount payable in relation to a hereditament by way of BID levy for a chargeable period or part of a chargeable period;
- (d) subject to article 15, of reaching agreement with a person who is liable for BID levy as to the manner of payment of an estimate of the amount payable and as to provision for the cessation or adjustment of payments and the making of fresh estimates;
- (e) where persons are jointly and severally liable to pay the BID levy as partners or trustees, of giving a notice which falls to be given under Part II of the 1989 Regulations severally to each or any of the owners or occupiers concerned, or jointly to the partnership or trust;
- (f) where a notice which falls to be given under Part II of the 1989 Regulations is given to more than one person in respect of the same amount, of notifying that fact to each such person; and
- (g) where under Part II of the 1989 Regulations there falls to be repaid an amount paid under a notice given to any persons jointly and severally liable as partners or trustees, of repaying the amount in question to any one or more of those persons.

Adjustment of amounts

5. A billing authority may authorise a contractor to exercise the functions—

- (a) of determining whether on any day (“the relevant day”) after the service of a demand notice the person on whom it was served has ceased to be liable for BID levy;
- (b) of calculating the amount payable for the period in the chargeable period up to the relevant day, and preparing and serving on the person who is liable for BID levy a notice stating that amount;
- (c) of revising an estimate in a demand notice of the amount payable on the ground that any factor or assumption by reference to which the estimate was calculated is shown to be false;
- (d) of preparing and serving on the person who is liable for BID levy a notice stating the amount of that revised estimate and, after deducting amounts (if any) already paid under the original demand notice, the remaining amount due; and
- (e) of repaying the amount by which the amounts already paid exceed the revised estimate, or crediting the amount against any subsequent liability of the person for BID levy.

Demand notices: final adjustments

6. A billing authority may authorise a contractor to exercise the functions—

- (a) after the expiry of a chargeable period or part of a chargeable period for which an amount is payable in relation to a hereditament by way of BID levy, of preparing and serving a further notice on the person who is liable for the BID levy stating the amount payable for the period or part in relation to the hereditament and adjusting the amounts required to be paid; and
- (b) where there has been an overpayment in respect of the person's liability under Part II of the 1989 Regulations, of repaying the amount overpaid or crediting it against any subsequent liability of the person for BID levy.

Executors and administrators – BID levy

7. A billing authority may authorise a contractor to exercise the functions of—
- (a) receiving an amount which the executor or administrator of a deceased person (who was, or is alleged to have been, liable for BID levy) is liable to pay;
 - (b) giving to an executor or administrator a notice requiring the payment of such an amount;
 - (c) paying to an executor or administrator an amount paid by the deceased person in excess of his liability for BID levy or any costs incurred in the enforcement of his liability for BID levy; and
 - (d) taking steps for the recovery of any amount from an executor or administrator.

Liability orders

8. A billing authority may authorise a contractor to exercise the functions—
- (a) of preparing and serving on any person against whom an application is to be made for a liability order, a reminder notice stating the amount in respect of which the application is to be made;
 - (b) where persons who are jointly and severally liable for BID levy are liable as partners or trustees, of giving a reminder notice severally to each or any of the owners or occupiers concerned, or jointly to the partnership or trust;
 - (c) where a reminder notice is given to more than one person in respect of the same amount, of notifying that fact to each of them;
 - (d) subject to article 16, of applying to the magistrates' court for a liability order against a person or, where two or more persons are jointly and severally liable as partners or trustees, against any one or more of those persons; and
 - (e) where the amount payable is paid after a liability order has been applied for but before it is made, of requesting the court to make the order in respect of the costs reasonably incurred in making the application.

Distress

9. Subject to article 17, a billing authority may authorise a contractor to exercise the functions—
- (a) of taking steps to levy by distress and sale of the debtor's goods the aggregate of—
 - (i) any outstanding amount which is or forms part of the amount in respect of which a liability order has been made; and
 - (ii) an amount determined in accordance with Schedule 3 to the 1989 Regulations (charges connected with distress) in respect of charges connected with the distress;
 - (b) where a liability order has been made against two or more persons jointly, of levying distress against any one or more of those persons; and

- (c) where the amount mentioned in paragraph (a) (including charges arising up to the time of the payment or tender) is paid or tendered before any goods are seized, or after goods have been seized in pursuance of the distress, but before sale of those goods, of accepting that amount and, if applicable, making the goods available for collection by the debtor.

Insolvency

10. Subject to article 17, a billing authority may authorise a contractor, for the purposes of collecting BID levy, to present to the court, in respect of an outstanding amount which is or forms part of the amount for which a liability order has been made against a debtor—

- (a) where the debtor is an individual, a petition for a bankruptcy order to be made against the debtor under section 264 of the Insolvency Act 1986⁽⁶⁾ (persons who may present a bankruptcy petition); and
- (b) where the debtor is a company, a petition for an order to be made under that Act for the winding up of the company.

PART 2

CONDITIONS ATTACHING TO THE EXERCISE OF FUNCTIONS

Interpretation

11. In this Part, “authority”, in relation to a function and a contractor, means the billing authority which authorises the exercise of the function by the contractor.

Conditions attaching to the exercise of functions

12. In relation to any function which is to be specified in an authorisation given by virtue of Part 1, the authorisation shall require the contractor to fulfil such of the conditions specified in this Part as are relevant to the exercise of the function.

Notices and other documents

13. In relation to the function of giving or serving a demand notice or any other notice or any request or other document, the contractor shall ensure that the document is given or served in the name of the authority.

Contents of demand notice

14. In relation to the function of preparing and serving a demand notice, the contractor shall ensure that the notice is prepared and served in compliance with regulations under section 48 of the 2003 Act (administration of BID levy etc).

Agreement as to payments etc

15. In relation to the function of entering into an agreement with any person as to the manner of payment of any amount, or any other matter, the contractor shall ensure that the agreement is entered into in the name of the authority.

(6) 1986 c. 45. Section 264 amended by S.I. 2002/1240 and section 170 of the Criminal Justice Act 1988.

Application for liability orders

16. In relation to the function of applying to a magistrates' court for a liability order against any person, the contractor shall ensure that the application is made in the name of the authority.

Enforcement

17. In relation to the function of taking steps by way of attachment of earnings, attachment of allowances, distress, bankruptcy, winding up or charging order, the contractor shall ensure that—

- (a) the steps are taken or brought in the name of the authority;
- (b) any instruction from the authority in relation to any debtor to take no (or no further) steps is immediately complied with;
- (c) any intention to take steps to levy any amount by distress and sale of the goods of any person is immediately notified in writing to the authority; and
- (d) upon the giving of any such instruction or receipt of any such amount, any goods of the debtor which have already been seized are not sold and are made available for collection by the debtor.

Information

18. In relation to any function which a contractor is authorised to exercise, the contractor—

- (a) shall take all necessary steps to ensure that he holds lawfully at all times all information obtained, whether from the authority or otherwise, in the course of exercising the function;
- (b) subject to the provisions of Schedule 15 to the Deregulation and Contracting Out Act 1994 (restrictions on disclosure of information), shall use that information only for the purpose of lawfully exercising that function; and
- (c) shall immediately comply with any written request made by the authority for the supply of any information, including copies of any records made or held by the contractor, relating to the exercise of that function.

Assignment and sub-contracting

19. A contractor shall not make any arrangement with another person for the exercise, whether in whole or in part, by that person of any function which the contractor has been authorised by Part 1 to exercise, unless that person has also been authorised by the billing authority concerned to exercise that function.

PART 3

MISCELLANEOUS PROVISIONS

Warrants of commitment

20.—(1) In this article—

- (a) “debtor” means any person against whom a billing authority proposes to apply for the issue of a warrant of commitment; and
- (b) “relevant functions” means the functions of—
 - (i) giving any notification by virtue of which any part of the amount payable under a liability order would, if paid, fall to be repaid or credited against any subsequent liability of the debtor; and

(ii) making calculations and taking other steps to determine a person's liability for the payment of any amount by reference to which such a notification falls to be prepared.

(2) Where an authority has authorised the exercise of relevant functions by a contractor, the authority shall, before applying for the issue of a warrant of commitment against any debtor, notify the contractor in writing—

- (a) that it proposes to make such an application; and
- (b) the name of the debtor concerned.

(3) Where an authority gives a notice under paragraph (2), the relevant functions falling to be exercised in relation to the debtor named in the notice shall cease to be exercisable by the contractor until the contractor is notified by the authority in writing that no further steps are to be taken as regards the recovery of the amount payable under the liability order made against the debtor, or that the debtor, if committed to prison, has been released.

Appearance of authority in legal proceedings

21. Where a contractor is authorised by virtue of Part 1 to exercise the function of applying to a magistrates' court for a liability order or taking steps to levy any amount by distress and sale of the goods of any person, section 223 of the Local Government Act 1972⁽⁷⁾ (appearance of local authorities in legal proceedings) shall have effect in relation to—

- (a) the hearing of an application for a liability order, and
- (b) an appeal brought by any person in connection with the distress,

as if the contractor were an officer of the authority.

Signed by authority of the First Secretary of State

Minister of State,
Office of the Deputy Prime Minister

(7) 1972 c. 70. Relevant amendments to section 223(1) made by the section 89 of the Solicitors Act 1974.

EXPLANATORY NOTE

(This note is not part of the Order)

Business Improvement Districts are provided for in Part 4 of the Local Government Act 2003 (c.26) as areas within which projects specified in BID arrangements are to be carried out for the benefit of that districts or those who live, work or carry on any activity in the district. Those projects are to be financed (in whole or part) by a BID levy imposed on the non-domestic ratepayers, or a class of such ratepayers in the district. A business improvement district may only be established where those entitled to vote approve the BID proposals.

This Order makes provision to enable a billing authority in England and Wales in relation to the BID levy to authorise another person, or that person’s employees, (a “contractor”) to exercise functions relating to the administration and enforcement of the BID levy. The following local authorities are billing authorities—

- (a) in relation to England, a district council, a county council that is the council for a county in which there are no district councils, a London borough council, the Common Council of the City of London and the Council of the Isles of Scilly, and
- (b) in relation to Wales, a county council and county borough council.

The exercise by a contractor of the functions described in Part 1 is subject to the conditions specified in Part 2, including, in particular—

- (a) in article 18, requirements relating to the holding and use of information obtained by the contractor in the course of exercising functions which he has been authorised to exercise; and
- (b) in article 19, a requirement that a contractor shall not make arrangements with any other person to exercise any function which he has been authorised to exercise, unless that person has also been authorised to exercise the function concerned.

In Part 3, article 20 provides for the notification of the contractor where the authority applies for the issue of a warrant of commitment; and article 21 provides that for a hearing in a magistrates’ court the contractor shall be treated as if it were an officer of the authority.