
STATUTORY INSTRUMENTS

1994 No. 3167

The Local Government Changes for England (Direct Labour and Service Organisations) Regulations 1994

**PART III
COMPETITION**

Interpretation etc.

12.—(1) In this Part—

- (a) “the Act” means the Local Government Act 1988;
- (b) expressions used which are also used in the Act have the meanings assigned by section 3 of the Act;
- (c) “excepted housing work” means work falling within the defined activity in section 2(2)(h) (housing management) of the Act⁽¹⁾, where either—
 - (i) the gross cost of that activity as estimated by the transferor authority if carried out by that authority in the financial year immediately preceding the reorganisation date would not exceed £500,000; and by virtue of an order, or of regulations under section 19 of the 1992 Act, 1,000 dwellings or more are transferred to the successor authority; or
 - (ii) the total number of dwellings managed by the successor authority on the reorganisation date is 15,000 or more;
- (d) “the reorganisation period” means the period beginning on the order date and ending the expiry of—
 - (i) 2 years beginning on the reorganisation date in relation to excepted housing work, and
 - (ii) 18 months beginning on that date in relation to other work.

Works contracts: transitional provision

13. Subject to regulations 16 to 18 below, where rights and liabilities under a works contract become vested in a successor authority, sections 9 to 14 of the Act shall apply on and after the reorganisation date to the successor authority in respect of that contract as they applied before that date in relation to the transferor authority.

Functional work: disapplication of tendering requirements

14.—(1) This regulation applies to functional work of a relevant authority carried out in the reorganisation period, other than work falling within the defined activity (housing management) in section 2(2)(h) of the Act, or to be carried out under a single arrangement—

(1) Paragraph (h) of section 2(2) is added by [S.I. 1994/1671](#).

- (a) in respect of which the response date falls on or before the order date; or
- (b) which is to be completed in a period of less than a year, or
- (c) in relation to which, in any relevant year, the relevant annual amount is less than £200,000.

(2) In paragraph (1) above “response date” in relation to any work means the date specified by the authority as the date by which any persons invited in pursuance of section 7(4) of the Act to carry out that work must respond to that invitation.

(3) Subject to the following provisions of this regulation, nothing in section 6 of the Act shall require a relevant authority to have complied with the first five conditions set out in section 7 of the Act in relation to work to which this regulation applies.

(4) But a relevant authority shall, before carrying out any such work—

- (a) draw up a detailed specification of the work; and
- (b) through their direct service organisation or a similar organisation, prepare a written statement of the amount which, but for paragraph (1) above, they would have included in a bid indicating their wish to carry out the work for the purposes of section 7(6) of the Act.

(5) In relation to work to which this regulation applies—

- (a) section 7(8) of the Act shall apply as if the reference to the detailed specification mentioned in subsections (2) and (3) of that section were a reference to the detailed specification prepared under paragraph (4)(a) above;
- (b) section 9(4) of the Act shall apply as if the reference to any bid prepared under section 7(6) of the Act were a reference to the statement prepared under paragraph (4)(b) above; and
- (c) section 13(1)(b) and section 14(1)(c) of the Act shall apply as if the requirement contained in paragraph (4) above were one of the six conditions required to be fulfilled by section 6 of the Act.

(6) Nothing in this regulation shall be construed as preventing the Secretary of State from serving a notice under section 13(1)(b) of the Act informing the authority that it appears to him—

- (a) that notwithstanding that the relevant annual amount applicable in relation to that work is equal to or greater than £200,000, that work could be or could have been carried out most economically and efficiently under more than one arrangement, and that, if it were so carried out, the relevant annual amount for at least one of those arrangements would be less than £200,000; or
- (b) that the work is to be or was carried out in a period of a year or more, but that it could most economically and efficiently be carried out or have been carried out in a period of less than a year;

and that therefore it appears to him that the condition set out in section 7(7) of the Act has not been fulfilled as regards that work.

(7) in this regulation—

“relevant annual amount” in relation to any relevant year, means—

- (a) in relation to work within the defined activity in section 2(2)(ee)(2) of the Act (sports and leisure management) and comprised in a detailed specification prepared in pursuance of section 7(3)(b) of the Act or of this regulation, the amount estimated by the defined authority to be the gross income likely to be obtained from carrying out that work in a relevant year in accordance with that specification; and
- (b) in relation to work within any other defined activity and comprised within such a specification, means the amount estimated by the authority as the amount which, if the authority were to carry out the work, would fall to be credited in pursuance of section 9(3)

of the Act to the account kept in respect of that work and that year; and “relevant year”, in relation to any work, means any financial year during which the work is to be carried out.

Functional work: transitional provision

15.—(1) Subject to the provisions of this Part, in relation to functional work sections 6 to 14 of the Act shall apply on and after the reorganisation date in relation to the successor authority as they would, but for the order, have applied to the transferor authority; and, in particular, as if the successor authority had prepared the written bid referred to in section 7(6) of the Act.

(2) Where in relation to any functional work of an abolished authority there is more than one successor authority, the provisions applied by paragraph (1) above shall have effect in relation to that work as if the amount stated in the written bid (the “bid amount”) had been the amount which each successor authority estimates to bear the same relation to the bid amount as the value of the work falling to be carried out by them bears to the value of the whole of the work.

Abolished authorities: annual reports, accounts etc.

16.—(1) Subject to the following provisions of this Part, in relation to an abolished authority and any financial year ending before the reorganisation date, the functions conferred on that authority by sections 9, 11 and 12 of the Act shall be exercisable on and after that date by the designated authority.

(2) But section 11(7) of the Act shall not apply in respect of a report required by this regulation to be prepared in relation to a financial year by a designated authority; and the designated authority shall, not later than 31st October in the financial year following that to which the report relates, send a copy of each such report to—

- (a) the Secretary of State;
- (b) the auditor of the transferor authority; and
- (c) any other successor authority in relation to the transferor authority.

Enforcement: notices

17.—(1) Where it appears to the Secretary of State that a transferor authority have carried out work which falls within a defined activity in circumstances where any of paragraphs (a) to (e) of section 13(1) of the Act applies, he may serve on such successor authority or authorities as he sees fit a written notice falling within paragraph (2) below.

(2) The notice is one which—

- (a) informs the successor authority that it appears to him that the transferor authority have acted as mentioned in one of the paragraphs (identified in the notice) of section 13(1),
- (b) identifies the work and states why it so appears, and
- (c) contains the requirement mentioned in paragraph (3) below.

(3) The requirement is that the authority submit to him within such time as is specified in the notice a written response which—

- (a) states that the transferor authority have not acted as mentioned in the paragraph concerned of section 13(1) and justifies the statement, or
- (b) states that the transferor authority have so acted and gives reasons why he should not give a direction under section 14 of the Act;

and section 13(4) and (5) of the Act shall apply in relation to notices under this regulation and to work specified in such notices as they apply in relation to notices under that section and to work therein specified.

Enforcement: directions

18. Where the Secretary of State—

- (a) has served a notice on a transferor authority under section 13 of the Act, or on a successor authority under regulation 17 above, and
- (b) the time specified in the notice has expired (whether or not he has received a written response to the notice), and
- (c) it still appears to him that the authority specified in the notice have acted as mentioned in the paragraph concerned of section 13(1),

section 14 of the Act shall apply in relation to that notice as if references to the authority or body were references to the successor authority.

Joint committees

19. Where, by virtue of an order, a joint committee to which section 1(4) of the Act applies ceases to exist or to exercise functions over the whole of the area in respect of which it was established, for the purposes of these Regulations the committee shall, on and after the reorganisation date, be treated as a transferor authority.

Small workforces: transitional provision

20.—(1) Where during the reorganisation period a successor authority carry out work comprised in an arrangement in relation to which the transferor authority were not required to comply with Part I of the Act by reason of article 3 of the Local Government Act 1988 (Defined Activities) (Exemptions) (England) Order 1988(3) (“the 1988 Order”), that work shall during that period not be treated as comprised in a defined activity.

(2) In relation to a new authority, no activity mentioned in section 2(2) of the Act shall be treated as a defined activity during the reorganisation period if before the reorganisation date the shadow authority estimate that the new authority will not incur, as the gross cost of carrying out that activity during the year following that date, a sum exceeding £100,000.

(3) For the purposes of this regulation the gross cost of carrying out an activity shall be determined as provided in article 3(3) of the 1988 Order.