
STATUTORY INSTRUMENTS

1997 No. 2649

LOCAL GOVERNMENT, ENGLAND AND WALES

WALES

**The Local Government Act 1988 (Competition)
(Wales) (No. 2) Regulations 1997**

Made - - - - *17th November 1997*
Laid before Parliament *21st November 1997*
Coming into force - - *12th December 1997*

The Secretary of State for Wales, in exercise of the powers conferred on him by sections 6(3) and 15(6) of the Local Government Act 1988⁽¹⁾, and of all other powers enabling him in that behalf, hereby makes the following Regulations:

Citation, commencement and application

1.—(1) These Regulations may be cited as the Local Government Act 1988 (Competition) (Wales) (No. 2) Regulations 1997 and shall come into force on 12th December 1997.

(2) These Regulations apply to defined authorities in Wales only.

Interpretation

2. In these Regulations—

“the construction regulations” means the Local Government Act 1988 (Competition) (Construction and Property Services) (Wales) Regulations 1997⁽²⁾;

“the financial services regulations” means the Local Government Act 1988 (Competition) (Financial Services) (Wales) Regulations 1997⁽³⁾;

“the housing management regulations” means the Local Government Act 1988 (Competition) (Housing Management) (Wales) Regulations 1997⁽⁴⁾;

“the information technology regulations” means the Local Government Act 1988 (Competition) (Information Technology) (Wales) Regulations 1997⁽⁵⁾;

(1) 1988 c. 9. Section 6 is amended by paragraph 12 of Schedule 1 to the Local Government Act 1992 (c. 19)
(2) S.I. 1997/127, amended by S.I. 1997/1699.
(3) S.I. 1997/130, amended by S.I. 1997/1699.
(4) S.I. 1997/935, amended by S.I. 1997/1699.
(5) S.I. 1997/125.

“the legal services regulations” means the Local Government Act 1988 (Competition) (Legal Services) (Wales) Regulations 1997(6);

“the personnel services regulations” means the Local Government Act 1988 (Competition) (Personnel Services) (Wales) Regulations 1997(7).

Amendments to the construction regulations

3.—(1) The construction regulations are amended in accordance with paragraph (2) below.

(2) In regulation 2 (interpretation)—

(a) after the definition of “the Act” insert—

““the 1980 Act” means the Local Government Planning and Land Act 1980;”(8)

(b) substitute the following for the definition of “the cost”—

““the cost” means the estimated total annual cost including overheads provided that that estimated cost (including overheads) is not treated by a defined authority as forming part of the cost of—

(a) another defined activity; or

(b) work to which Part III (direct labour organisations) of the 1980 Act applies”;

(c) substitute the following for the definition of “the specified proportion”—

““the specified proportion” means an amount equal to the product of the formula—

$$\mathbf{(T - (A + B)) - (C + D \div E + F + G + J)}$$

where—

T = an amount equal to the cost to a defined authority of the specified work,

A = an amount equal to the cost of specified work which is being carried out by a person other than a defined authority in connection with work falling within any other defined activity or in connection with work to which Part III of the 1980 Act applies where that work is being carried out by another person on behalf of a defined authority;

B = an amount equal to any amount included in T in respect of goods or services which are provided by a person other than a defined authority;

C = an amount equal to 45 per cent of (T – (A + B)) or £450,000 whichever is the greater;

D = (i) for work awarded before 1st April 1994, an amount equal to the cost of specified work which is being carried out following voluntary competitive tendering;

(ii) for work awarded after 12th December 1997, an amount equal to 125 per cent of the cost of specified work which is being carried out following voluntary competitive tendering;

E = an amount equal to the cost of any specified work being carried out following a competitive tendering process in

(6) S.I. 1997/126, amended by S.I. 1997/1699.

(7) S.I. 1997/129.

(8) 1980 c. 65.

- respect of that work conducted in accordance with the provisions of the Act;
- F** = an amount equal to the cost of any specified work being carried out by a person other than a defined authority following a competitive tendering process where—
- (a) no defined authority submitted a bid to carry out that work, and
 - (b) that work had previously been carried out by the defined authority conducting that process or by its predecessor;
- G** = an amount equal to 45 per cent of the cost of work carried out by a defined authority which is funded from a school's delegated budget provided under a scheme prepared in accordance with section 103 (local education authority required to have scheme for purposes of Chapter V) of the Education Act 1996⁽⁹⁾; and
- J** = for the period of two years beginning on 1st October 1999, an amount equal to the cost of work falling within paragraph 12(3)(d) or (e) of Schedule 1 to the Act, where that work has been started before that date;

provided that—

- (a) any amount taken into account in applying any element in the formula (other than T) shall not also be taken into account in applying any other element in the formula; and
 - (b) any such amount shall not be taken into account in applying any element in the formula used for calculating the specified proportion of any other defined activity;
- (d) after the definition of “specified work” insert—

“and

“voluntary competitive tendering” means the award (whether or not to the defined authority conducting the process) of work following a competitive process in the course of which at least three persons who are not defined authorities were invited to tender for that work.”.

Amendments to the financial services regulations

4.—(1) The financial services regulations are amended in accordance with paragraph (2) below.

(2) In regulation 2 (interpretation)—

(a) after the definition of “the Act” insert—

““the 1980 Act” means the Local Government Planning and Land Act 1980;”

(b) substitute the following for the definition of “the cost”—

““the cost” means the estimated total annual cost including overheads provided that that estimated cost (including overheads) is not treated by a defined authority as forming part of the cost of—

(a) another defined activity; or

- (b) work to which Part III (direct labour organisations) of the 1980 Act applies”;
- (c) substitute the following for the definition of “the specified proportion”—

““the specified proportion” means an amount equal to the product of the formula—

$$\frac{\mathbf{T} - (\mathbf{A} + \mathbf{B})}{\mathbf{T} - (\mathbf{A} + \mathbf{B}) - (\mathbf{C} + \mathbf{D} + \mathbf{E} + \mathbf{F} + \mathbf{G})}$$

where—

- T** = an amount equal to the cost to a defined authority of the specified work and of determination work;
- A** = an amount equal to the cost of specified work which is being carried out by a person other than a defined authority in connection with work falling within any other defined activity or in connection with work to which Part III of the 1980 Act applies where that work is being carried out by another person on behalf of a defined authority;
- B** = an amount equal to any amount included in T in respect of goods or services which are provided by a person other than a defined authority;
- C** = an amount equal to 60 per cent of $T - (A + B)$ or £300,000 whichever is the greater;
- D** =
- (i) for work awarded before 1st April 1994, an amount equal to the cost of specified work which is being carried out following voluntary competitive tendering;
 - (ii) for work awarded after 12th December 1997, an amount equal to 125 per cent of the cost of specified work which is being carried out following voluntary competitive tendering;
- E** = an amount equal to the cost of any specified work being carried out following a competitive tendering process in respect of that work conducted in accordance with the provisions of the Act;
- F** = an amount equal to the cost of any specified work being carried out by a person other than a defined authority following a competitive tendering process where—
- (a) no defined authority submitted a bid to carry out that work; and
 - (b) that work had previously been carried out by the defined authority conducting that process or by its predecessor; and
- G** = an amount equal to 60 per cent of the cost of work carried out by a defined authority which is funded from a school’s delegated budget provided under a scheme prepared in accordance with section 103 (local education authority required to have scheme for purposes of Chapter V) of the Education Act 1996;

provided that—

- (a) any amount taken into account in applying any element in the formula (other than T) shall not also be taken into account in applying any other element in the formula; and

- (b) any such amount shall not be taken into account in applying any element in the formula used for calculating the specified proportion of any other defined activity;”
- (c) after the definition of “specified work” insert—

“and

“voluntary competitive tendering” means the award (whether or not to the defined authority conducting the process) of work following a competitive process in the course of which at least three persons who are not defined authorities were invited to tender for that work.”.

Amendments to the housing management regulations

5.—(1) The housing management regulations are amended in accordance with paragraphs (2) and (3) below.

(2) In regulation 2 (interpretation)—

(a) substitute the following for the definition of “the cost”—

““the cost” means the estimated total annual cost including overheads provided that that estimated cost (including overheads) is not treated by a relevant authority as forming part of the cost of—

- (a) another defined activity; or
- (b) work to which Part III (direct labour organisations) of the Local Government Planning and Land Act 1980 applies;”;

(b) substitute the following for the definition of “voluntary competitive tendering”—

““voluntary competitive tendering” means the award (whether or not to the relevant authority conducting the process) of housing management work following a competitive process in the course of which at least three persons who are not relevant authorities were invited to tender for that work.”.

(3) In regulation 3 (application of section 6), for paragraph (2) substitute the following—

“(2) Where housing management work is being carried out by a relevant authority in consequence of voluntary competitive tendering the relevant amount shall be reduced in relation to that authority—

- (a) in respect of work awarded before 18th April 1997 by an amount equal to the cost of that work which is being carried out by that authority, and
- (b) in respect of work awarded on or after 12th December 1997 by an amount equal to 125 per cent of the cost of such work.”

Amendments to the information technology services regulations

6.—(1) The information technology services regulations are amended in accordance with paragraph (2) below.

(2) In regulation 2 (interpretation)—

(a) after the definition of “the Act” insert—

““the 1980 Act” means the Local Government Planning and Land Act 1980;”

(b) substitute the following for the definition of “the cost”—

“the cost” means the estimated total annual cost including overheads provided that that estimated cost (including overheads) is not treated by a defined authority as forming part of the cost of—

- (a) another defined activity; or
 - (b) work to which Part III (direct labour organisations) of the 1980 Act applies”;
- (c) substitute the following for the definition of “the specified proportion”—

“the specified proportion” means an amount equal to the product of the formula—

$$(T - (A + B)) - (C + D + E + F - G + J)$$

where—

- T** = an amount equal to the cost to a defined authority of the specified work;
- A** = an amount equal to the cost of specified work which is being carried out by a person other than a defined authority in connection with work falling within any other defined activity or in connection with work to which Part III of the 1980 Act applies where that work is being carried out by another person on behalf of a defined authority;
- B** = an amount equal to any amount included in T in respect of goods or services which are provided by a person other than a defined authority;
- C** = an amount equal to 60 per cent of $(T + (A + B))$ or £300,000 whichever is the greater;
- D** =
 - (i) for work awarded before 1st April 1994, an amount equal to the cost of specified work which is being carried out following voluntary competitive tendering;
 - (ii) for work awarded after 12th December 1997, an amount equal to 125 per cent of the cost of specified work which is being carried out following voluntary competitive tendering;
- E** = an amount equal to the cost of any specified work being carried out following a competitive tendering process in respect of that work conducted in accordance with the provisions of the Act;
- F** = an amount equal to the cost of any specified work being carried out by a person other than a defined authority following a competitive tendering process where—
 - (a) no defined authority submitted a bid to carry out that work; and
 - (b) that work had previously been carried out by the defined authority conducting that process or by its predecessor;
- G** = an amount equal to 60 per cent of the cost of work carried out by a defined authority which is funded from a school’s delegated budget provided under a scheme prepared in accordance with section 103 (local education authority required to have scheme for purposes of Chapter V) of the Education Act 1996; and

J = an amount equal to the cost of specified work which is being carried out by a defined authority, being work undertaken by way of functional work at the request of any person other than a defined authority who is carrying out work (“other work”) on the authority’s behalf, for the purpose of facilitating such other work

provided that—

- (a) any amount taken into account in applying any element in the formula (other than T) shall not also be taken into account in applying any other element in the formula; and
- (b) any such amount shall not be taken into account in applying any element in the formula used for calculating the specified proportion of any other defined activity;”
- (c) for the definition of “voluntary competitive tendering” substitute the following—
““voluntary competitive tendering” means the award (whether or not to the defined authority conducting the process) of work following a competitive process in the course of which at least three persons who are not defined authorities were invited to tender for that work.”.

Amendments to the legal services regulations

7.—(1) The legal services regulations are amended in accordance with paragraph (2) below.

(2) In regulation 2 (interpretation)—

(a) after the definition of “the Act” insert—

““the 1980 Act” means the Local Government Planning and Land Act 1980;”

(b) substitute the following for the definition of “the cost”—

““the cost” means the estimated total annual cost including overheads provided that that estimated cost (including overheads) is not treated by a defined authority as forming part of the cost of—

- (a) another defined activity; or
- (b) work to which Part III (direct labour organisations) of the 1980 Act applies”;

(c) substitute the following for the definition of “the specified proportion”—

““the specified proportion” means an amount equal to the product of the formula—

$$\mathbf{(T - (A + B)) - (C \div D + E + F + G)}$$

where—

T = an amount equal to the cost to a defined authority of the specified work;

A = an amount equal to the cost of specified work which is being carried out by a person other than a defined authority in connection with work falling within any other defined activity or in connection with work to which Part III of the 1980 Act applies where that work is being carried out by another person on behalf of a defined authority;

B = an amount equal to any amount included in T in respect of goods or services which are provided by a person other than a defined authority;

- C** = an amount equal to 55 per cent of $(T - (A + B))$ or £300,000 whichever is the greater;
- D** =
- (i) for work awarded before 1st April 1994, an amount equal to the cost of specified work which is being carried out following voluntary competitive tendering;
 - (ii) for work awarded after 12th December 1997, an amount equal to 125 per cent of the cost of specified work which is being carried out following voluntary competitive tendering;
- E** = an amount equal to the cost of any specified work being carried out following a competitive tendering process in respect of that work conducted in accordance with the provisions of the Act;
- F** = an amount equal to the cost of any specified work being carried out by a person other than a defined authority following a competitive tendering process where—
- (a) no defined authority submitted a bid to carry out that work; and
 - (b) that work had previously been carried out by the defined authority conducting that process or by its predecessor; and
- G** = an amount equal to 55 per cent of the cost of work carried out by a defined authority which is funded from a school's delegated budget provided under a scheme prepared in accordance with section 103 (local education authority required to have scheme for purposes of Chapter V) of the Education Act 1996;

provided that—

- (a) any amount taken into account in applying any element in the formula (other than T) shall not also be taken into account in applying any other element in the formula; and
 - (b) any such amount shall not be taken into account in applying any element in the formula used for calculating the specified proportion of any other defined activity,”
- (c) after the definition of “specified work” insert—

“and

“voluntary competitive tendering” means the award (whether or not to the defined authority conducting the process) of work following a competitive process in the course of which at least three persons who are not defined authorities were invited to tender for that work.”.

Amendments to the personnel services regulations

8.—(1) The personnel services regulations are amended in accordance with paragraph (2) below.

(2) In regulation 2 (interpretation)—

(a) after the definition of “the Act” insert—

““the 1980 Act” means the Local Government Planning and Land Act 1980”;

(b) substitute the following for the definition of “the cost”—

“the cost” means the estimated total annual cost including overheads provided that that estimated cost (including overheads) is not treated by a defined authority as forming part of the cost of—

- (a) another defined activity; or
- (b) work to which Part III (direct labour organisations) of the 1980 Act applies”;

(c) substitute the following for the definition of “the specified proportion”—

“the specified proportion” means an amount equal to the product of the formula—

$$\frac{\mathbf{T - (A + B)}}{\mathbf{(C + D + E + F + G + J)}}$$

where—

- T** = an amount equal to the cost to a defined authority of the specified work;
- A** = an amount equal to the cost of specified work which is being carried out by a person other than a defined authority in connection with work falling within any other defined activity or in connection with work to which Part III of the 1980 Act applies where that work is being carried out by another person on behalf of a defined authority;
- B** = an amount equal to any amount included in T in respect of goods or services which are provided by a person other than a defined authority;
- C** = an amount equal to—
 - (a) 85 per cent of $(T - (A + B))$ or £400,000, whichever is the greater, in relation to specified work carried out by a combined fire authority; or
 - (b) 60 per cent of $(T - (A + B))$ or £300,000, whichever is the greater, in relation to specified work carried out by any other defined authority to which these Regulations apply;
- D** =
 - (i) for work awarded before 1st April 1994, an amount equal to the cost of specified work which is being carried out following voluntary competitive tendering;
 - (ii) for work awarded after 12th December 1997, an amount equal to 125 per cent of the cost of specified work which is being carried out following voluntary competitive tendering;
- E** = an amount equal to the cost of any specified work being carried out following a competitive tendering process in respect of that work conducted in accordance with the provisions of the Act;
- F** = an amount equal to the cost of any specified work being carried out by a person other than a defined authority following a competitive tendering process where—
 - (a) no defined authority submitted a bid to carry out that work; and
 - (b) that work had previously been carried out by the defined authority conducting that process or by its predecessor; and

- G** = an amount equal to 60 per cent of the cost of work carried out by a defined authority which is funded from a school's delegated budget provided under a scheme prepared in accordance with section 103 (local education authority required to have scheme for purposes of Chapter V) of the Education Act 1996; and
- J** = an amount equal to 60 per cent of the cost of work falling within paragraph 15(1)(g) of Schedule 1 to the Act where that work is carried out by a defined authority and is wholly funded by—
- (a) a grant paid to the authority pursuant to section 484 (grants for education support and training) of the Education Act 1996 or the Grants for Welsh Language Regulations 1980⁽¹⁰⁾ which is paid on to a governing body of a school with a delegated budget provided under a scheme prepared in accordance with section 103 of that Act; or
 - (b) a matching contribution by the authority to such a grant which is paid on to such a governing body;

provided that—

- (a) any amount taken into account in applying any element in the formula (other than T) shall not also be taken into account in applying any other element in the formula; and
 - (b) any such amount shall not be taken into account in applying any element in the formula used for calculating the specified proportion of any other defined activity;
- (c) after the definition of “specified work” insert—

“and

“voluntary competitive tendering” means the award (whether or not to the defined authority conducting the process) of work following a competitive process in the course of which at least three persons who are not defined authorities were invited to tender for that work.”.

Partial revocation of the Local Government Act 1988 (Competition) (Wales) Regulations 1997

9. — The provisions of regulations 2(1), 3(1) and 5(1) of the Local Government Act (Competition) (Wales) Regulations 1997⁽¹¹⁾ cease to have effect.

⁽¹⁰⁾ S.I. 1980/1011.

⁽¹¹⁾ S.I. 1997/1699.

Signed by authority of the Secretary of State for Wales

17th November 1997

Win Griffiths
Parliamentary Under Secretary of State, Welsh
Office

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations amend regulations made under Part I (competition) of the Local Government Act 1988 (“the 1988 Act”) in respect of the defined activities of construction and property services, financial services, housing management, information technology services, legal services and personnel services.

2. In the case of all services, a credit in respect of voluntary competitive tendering is allowed. For work awarded after 12th December 1997 the credit is of an amount equal to 125 per cent of the cost of the work.

3. Except in the case of housing management that credit is provided by means of a new definition of “D” for the purposes of the relevant formula. For housing management the credit is provided by reduction of the “relevant amount” to which section 6 of the 1988 Act is applied by regulation 3 of the Local Government Act 1988 (Competition) (Housing Management) (Wales) Regulations 1997.

4. In the case of all services the cost of specified work for the purposes of the relevant formula is redefined to provide for such work and its overheads to be treated as forming part of the cost of one activity only.

5. In the case of all services, except housing management, a percentage credit is allowed for work carried out by a defined authority which is funded from a school’s delegated budget under a scheme prepared under section 103 of the Education Act 1996 (the definition of “G” in the relevant formula).

6. In regulation 3, other changes are made to the regulations relating to construction and property services which—

- (a) reduce from 65 per cent to 55 per cent the amount of work that is subject to competition;
- (b) raise the de minimis threshold from £300,000 to £450,000; and
- (c) restore the credit for work in progress to run for a period of two years beginning on 1st October 1999.

7. In regulation 4, changes are made to the regulations relating to financial services to require authorities to expose 40 per cent of financial services work to competition.

8. In regulation 8, a change is made to the regulations relating to personnel services which allows a 60 per cent credit (“J”) for employee training work carried out by a defined authority which is funded by grants for education support and training paid to a school’s governing body under a delegated budget scheme, or by a matching contribution paid to the governing body by the authority.

9. Regulation 9 revokes in part the Local Government Act 1988 (Competition) (Wales) Regulations 1997.