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STATUTORY INSTRUMENTS

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**1994 No. 3167**

**LOCAL GOVERNMENT, ENGLAND AND WALES**

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

<i>Made</i>	- - - -	<i>12th December 1994</i>
<i>Laid before Parliament</i>		<i>19th December 1994</i>
<i>Coming into force</i>	- -	<i>9th January 1995</i>

The Secretary of State for the Environment, in exercise of the powers conferred on him by sections 19 and 26(4) of the Local Government Act 1992<sup>(1)</sup> and of all other powers enabling him in that behalf, hereby makes the following Regulations:

**PART 1**  
**PRELIMINARY**

**Citation and commencement**

1. These Regulations may be cited as the Local Government Changes for England (Direct Labour and Service Organisations) Regulations 1994 and shall come into force on 9th January 1995.

**Interpretation**

2. In these Regulations—

“the 1992 Act” means the Local Government Act 1992;

“abolished authority” means a local authority which is wound up and dissolved by an order;

“designated authority” in relation to an abolished authority means—

(a) where there is one successor authority, that authority;

(b) where there are two or more successor authorities, the successor authority specified in an order as the designated authority for the purposes of the Local Government changes for England (Finance) Regulations 1994<sup>(2)</sup>;

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(1) 1992 c. 19.

(2) S.I. 1994/2825.

“order” means an order under section 17 of the 1992 Act which effects a structural change, and “order date” in relation to a relevant authority means the date on which an order comes into force, or, if there is more than one such date, the first of them;

“relevant authority” means a transferor authority or successor authority;

“reorganisation date” in relation to an authority for any area means the date on which any structural change, or boundary change made for the purpose of facilitating a structural change, affecting that area takes effect;

“shadow authority” in relation to a new authority means the authority established for the purposes of that authority in pursuance of the Local Government Changes for England Regulations 1994(3);

“successor authority” in relation to an abolished authority means a local authority which is to have from the reorganisation date all the functions (or would have all the functions but for an order under section 21 or 22 of the Act) in relation to an area, being functions which before that date were the functions of an abolished authority in relation to that area, and

“transferor authority” in relation to a successor authority means the authority whose functions are so transferred.

## PART II

### DIRECT LABOUR ORGANISATIONS

#### Interpretation

##### 3. In this Part—

- (a) “the Act” means the Local Government, Planning and Land Act 1980(4);
- (b) expressions used which are also used in the Act have the meanings assigned by section 20 of the Act, and
- (c) “the reorganisation period” means the period beginning with the order date and ending with the expiry of 18 months beginning on the reorganisation date.

#### Works contracts: transitional provision

4. Subject to regulations 7 to 9 below, where rights and liabilities under a works contract become vested in a successor authority, sections 10 to 19B of the Act shall apply on and after the reorganisation date in relation 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

5.—(1) This regulation applies to functional work of a relevant authority undertaken in the reorganisation period, other than work to be undertaken under a single arrangement—

- (a) in relation to 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) which has an annual cost in any relevant year of less than £200,000.

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(3) S.I. 1994/867.

(4) 1980 c. 65. Part III is amended by Schedule 6 to the Local Government Act 1988 and Schedule 1 to the Local Government Act 1992.

(2) In paragraph (1) above “response date” in relation to any work means the date specified by the authority as the date by which persons invited in pursuance of section 9(4) of the Act to offer to undertake that work must respond to that invitation.

(3) Subject to the following provisions of this regulation, nothing in section 9 of the Act shall require a relevant authority to have complied with the conditions in subsection (4) of that section in relation to work to which this regulation applies.

(4) But a relevant authority shall, in relation to work to which this regulation applies, draw up the conditions which would have been specified by them for the purposes of section 9(4)(a) of the Act but for paragraph (3) above.

(5) Nothing in this regulation shall be construed as preventing the Secretary of State from serving a notice under section 19A(1)(b) of the Act informing the authority that it appears to him—

- (a) that they have estimated the annual cost of work to amount to £200,000 or more, but that the work is functional work which could most economically and efficiently be undertaken in more than one arrangement at least one of which would have an estimated annual cost of less than £200,000; or
- (b) that the work is to be or was undertaken in a period of a year or more, but that it appears to him that it could most economically and efficiently be or have been undertaken in a period of less than a year;

and that it therefore appears to him that the provisions of section 9(4)(aaaa) of the Act have not been complied with as regards that work.

(6) In this regulation—

“annual cost” in relation to any work and any relevant year, means the amount estimated by the authority as the amount which, if the authority were to undertake the work, would fall to be credited in pursuance of section 12 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 undertaken.

### **Functional work: transitional provision**

6.—(1) Subject to the following provisions of this Part, sections 9 to 19B of the Act shall apply on and after the order date in respect of functional work in relation to a 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 statement required by section 9(2).

(2) Where in relation to any functional work 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 that written statement (“the stated amount”) had been the amount which each successor authority estimate to bear the same relation to the stated 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.**

7.—(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 10 to 14 and 18 shall be exercisable on and after that date by the designated authority.

(2) But section 18(2A) of the Act shall not apply in respect of a report required by virtue of 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**

**8.—**(1) Where it appears to the Secretary of State that construction or maintenance work has been undertaken in circumstances where the transferor authority has failed to comply with any of paragraphs (a) to (g) of section 19A(1) of the Act, 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 19A(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 19A(1)(a) 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 19B of the Act;

and section 19A(4) of the Act shall apply in relation to notices under this regulation as it applies in relation to notices under that section.

**Enforcement: directions**

**9.** Where the Secretary of State—

- (a) has served a notice on a transferor authority under section 19A of the Act, or on a successor authority under regulation 8 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 19A(1),

section 19B(2) to (7) 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**

**10.** Where, by virtue of an order, a joint committee to which section 19 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**

**11.—**(1) Where during the reorganisation period a successor authority undertake work comprised in an arrangement in relation to which Part III of the Act did not, by reason of section 21 of the Act, apply in relation to the transferor authority in the year ending immediately before the reorganisation

date, nothing in that section shall require the authority to comply with the requirements of that Part in respect of that work.

(2) In relation to a new authority, Part III of the Act shall not apply during the reorganisation period if before the reorganisation date the shadow authority estimate that during that period the new authority will not at any one time employ more than fifteen persons (other than persons excluded by section 21(2) of the Act from the application of section 21 (1)) to be engaged (whether wholly or partly) in carrying out or undertaking construction and maintenance work.

## 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<sup>(5)</sup>, 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—

- (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

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

(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)(6) 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(7) (“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.

Signed by authority of the Secretary of State

12th December 1994

*Robert Jones*  
Parliamentary Under Secretary of State,  
Department of the Environment



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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make provision for the application of the competition provisions of the Local Government, Planning and Land Act 1980 (“the 1980 Act”) and the Local Government Act 1988 in relation to local authorities affected by structural change under the Local Government Act 1992.

Part I makes preliminary provision, and Part II deals with the requirements of the 1980 Act relating to direct labour organisations. Regulations 4 and 6 provide for continuity where a successor authority continues either a works contract or the undertaking of functional work. Regulation 5 exempts affected authorities from complying with the Act’s tendering requirements in respect of functional work for a period ending 18 months from the date of structural change, except where the work is of short duration or estimated to have an annual cost of less than £200,000. Regulation 7 provides for the treatment of the annual report and accounts of abolished authorities, and regulations 8 and 9 for the enforcement of the Act as against successor authorities. Regulation 10 provides for application in respect of joint committees, and regulation 11 enables small work forces to continue to be exempt from the provisions of the Act.

Part III makes like provision in relation to the requirements of the Local Government Act 1988 relating to direct service organisations, and makes special provision for the exemption of certain housing management work.