



THE SCOTTISH OFFICE  
Environment Department

AGENDA ITEM No. 6

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The Chief Executive Regional, Islands  
and District Councils

Our ref: LOE/3/3

1 June 1995

Dear Sir/Madam

**THE LOCAL GOVERNMENT(DIRECT SERVICE ORGANISATIONS) (COMPETITION)  
(AMENDMENT) REGULATIONS 1995 (SI 1995/1336)**

As you will be aware, section 9 of the Local Government Act 1992 empowers the Secretary of State to make regulations governing the conduct of compulsory competitive tendering (CCT). The first such regulations, the Local Government (Direct Service Organisations) (Competition) Regulations 1993, SI 1993/848, were made on 24 March 1993. These regulations cover such matters as the timings of the tender process, preparation and evaluation of bids, and allowable and prospective costs.

SI 1993/848 has now been amended by the Local Government (Direct Service Organisations) (Competition) (Amendment) Regulations 1995 (SI 1993/1336). A copy of these regulations is attached, together with a briefing note outlining the purpose of each regulation. The amendments cover matters such as references to the new "white collar services", references to new legislation and corrections to some minor errors in the original regulations.

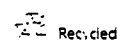
The amendment regulations were laid before Parliament on 24 May and will come into force on 14 June.

Any enquiries on this letter should be addressed to me at The Scottish Office Environment



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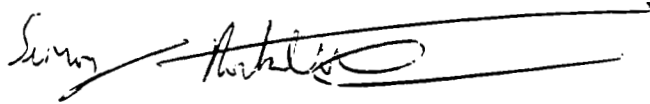


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Department, Local Government Division, Room 6/104, New St Andrew's House, Edinburgh,  
EH1 3TG. (Phone: 0131 244 4058) (Fax: 0131 244 4785).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Simon Stockwell', is written over a horizontal line. The signature is fluid and cursive.

SIMON STOCKWELL

CC: The Chief Executive, Shadow Authorities  
The Chief Executive/Managing Director New Town Development Corporations  
The Secretary, Scottish Homes  
The Clerk, Central Scotland Water Board  
The Clerk, Lothian and Borders Fire Board  
The Clerk, Highlands and Islands Fire Board  
The Clerk, Lothian and Borders Police Board  
The Clerk, The Northern Joint Police Committee

**BRIEFING NOTE ON THE LOCAL GOVERNMENT (DIRECT SERVICE ORGANISATIONS) (COMPETITION) (AMENDMENT) REGULATIONS 1995 (SI 1995/1336)**  
**(The Amendment Regulations)**

The Amendment Regulations amend the Local Government (Direct Service Organisations) (Competition) Regulations 1993 (the Original Regulations).

Unless otherwise stated references are to the Amendment Regulations.

**Regulation 1 and 2** are self explanatory.

**Regulation 3** the new definition of "allowable costs" (in 3(a)) and "prospective costs" (in 3(e)) confirm that authorities have discretion as to whether such costs are brought into tender evaluation, although if an authority chooses to bring such costs into account it must do so in accordance with the regulations.

**Regulation 3(b)** clarifies the definition of a local authority.

**Regulation 3(c)** provides a definition of TUPE which is required elsewhere in the regulations.

**Regulation 3(d)** corrects a typographical error in the original regulations.

**Regulation 4(1)** the EC directive referred to has now been implemented by UK regulations.

**Regulation 4(2)** this amendment makes it clear that original regulation 2(3) (which allows tenderers not less than 40 days to respond to a tender invitation) is restricted to work subject to the Local Government Act 1988. However, this does not affect the fact that 1980 Act tendering (relating to building maintenance etc) is subject to the duty on local authorities to avoid anti-competitive behaviour, and that authorities should continue to have regard to the guidance on CCT issued by the Government.

**Regulation 5.** At the moment CCT contracts must commence between 30 and 120 days after the successful tenderer has been decided. This regulation disapplies the time limit in relation to white collar activities. This will allow white collar work to be commenced quickly, if possible but also reflects the fact that in some areas (such as IT) it might be difficult for a private sector contractor to set up quickly, as adjustments to systems etc may be required.

**Regulation 6(1)** Original Regulation 4 relates to the client/contractor split and restricts who can be involved in both a "relevant operation" (client side role) and an activity connected with a DSO (contractor side role). It is acknowledged that elected members may be involved in both roles but the Original Regulations appeared to prevent this. This was not intended and amendment regulation 6(1)(a) corrects this position. Nonetheless, elected members should continue to have regard to the guidance on this matter issued by the Government.

Original Regulation 4(3)(a)(iii) provided for professional staff to give advice both to the client side and contractor side in relation to a CCT tendering exercise. Amendment

Regulation 6(1)(b) prohibits professionals from giving advice to the client side when it is their own class of activity which is subject to CCT.

**Regulation 6(1)(c)** clarifies the position of senior ranks and personnel in police authorities.

**Regulation 6(2)** applies only to Scotland and ensures that Original Regulation 4(3) applies appropriately to joint police boards.

**Regulation 7(1)** allows an extra 30 days for the evaluation of tenders in respect of housing management.

**Regulation 7(2)** corrects a typographical error.

**Regulation 8(1)** corrects the list of superannuation/compensation regulations (certain payments under these may be included in tender evaluation).

**Regulation 8(2).** Original Regulation 12 provided for the calculation of allowable costs to be included in tender evaluation. Such costs may involve a lump sum paid at the time of redundancy and an amount in respect of future annual payments: for the latter, a figure of 15 times the current value of one year's payment was used. It has been argued that Original Regulation 12 allowed 15 times the lump sum to be taken into account in tender evaluation. The new formula ensures that the original intention is achieved.

**Regulation 9** introduces a new regulation, Regulation 14A. In accordance with the "Issues Paper" concerning TUPE matters circulated to authorities in January 1994, an authority may agree to give an indemnity to a contractor against costs which a contractor may face if, having proceeded on the basis that TUPE, did not apply, it is later held that TUPE did apply. New Regulation 14A provides for the reasonable cost to the authority of giving such an indemnity to be treated as a prospective cost.

**Regulation 10.** The format of the publication "Economic Trends" published by the Central Statistical Office has changed and the reference to "Table 2" is no longer relevant.

THE SCOTTISH OFFICE ENVIRONMENT DEPARTMENT  
June 1995

1995 No. 1336

**LOCAL GOVERNMENT, ENGLAND AND WALES  
LOCAL GOVERNMENT, SCOTLAND**

**The Local Government (Direct Service Organisations)  
(Competition) (Amendment) Regulations 1995**

*Made* - - - - - *18th May 1995*

*Laid before Parliament* *24th May 1995*

*Coming into force* - - *14th June 1995*

The Secretary of State for the Environment in relation to England, the Secretary of State for Scotland in relation to Scotland, and the Secretary of State for Wales in relation to Wales, in exercise of the powers conferred upon them by section 9(4)(aa) of the Local Government, Planning and Land Act 1980(a), and section 8(2)(a) of the Local Government Act 1988(b) and section 9 of the Local Government Act 1992(c), and of all other powers enabling them in that behalf, hereby make the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Local Government (Direct Service Organisations) (Competition) (Amendment) Regulations 1995 and shall come into force on 14th June 1995.

**Amendment of 1993 Regulations**

2. The Local Government (Direct Service Organisations) (Competition) Regulations 1993(d) are amended as provided as follows.

**Interpretation**

3. In regulation 1(2)—

(a) for the definition of “allowable cost” there is substituted—

“‘allowable cost’ means an amount (being an amount which a local authority decide to take into account in deciding who should undertake or carry out work) which is described as an allowable cost in regulation 9 or 10”;

(b) in the definition of “local authority”, the words “local authority or” are inserted before the words “development body”;

(c) after the definition of “the present value of savings” there is inserted—

“‘the 1981 Regulations’ means the Transfer of Undertakings (Protection of Employment) Regulations 1981(e);”;

(d) in the definition of “the 1979 Regulations”, for the words “the Local Government (Compensation for Redundancy and Premature Retirement) (Scotland) Amendment

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(a) 1980 c. 65. Section 9(4)(aa) is inserted by paragraph 3(3) of Schedule 6 to the Local Government Act 1988.

(b) 1988 c. 9.

(c) 1992 c. 19.

(d) S.I. 1993/848.

(e) S.I. 1981/1794. Relevant amendments are made by Schedule 10 to the Trade Union Reform and Employment Rights Act 1993 (c. 19).

Regulations 1984” there are substituted the words “the Local Government (Compensation for Redundancy and Premature Retirement) (Scotland) Regulations 1984”; and

(e) for the definition of “prospective cost” there is substituted—

“‘prospective cost’ means an amount (being an amount which a local authority decide to take into account in the evaluation of tenders) which is described as a prospective cost in regulations 12 to 14A”.

#### **Periods for response to notice, etc.**

4.—(1) In regulation 2(1), for the words “nor Council Directive 92/50/EEC” there shall be substituted “nor the Public Services Contracts Regulations 1993(a)”.

(2) In regulation 2(3) for the words from the beginning to “for the work” there is substituted “The invitation to tender referred to in section 7(4) of the 1988 Act”.

#### **Period elapsing before commencement of work**

5. In regulation 3, for the words “In a case where” there is substituted “In a case falling within a defined activity mentioned in paragraphs (a) to (i) of section 2(2) of the 1988 Act, where”.

#### **Preparation of bids**

6.—(1) In regulation 4(3)(a) there are added—

(a) after the words “by any individual apart from”, the words “an elected member or”;

(b) at the end of paragraph (iii), the words “(other than advice within the description of work for which tenders are to be invited)”;

(c) at the end, the following—

“(iv) in the case of a police authority, or, in Scotland (subject to paragraph (4) below), a police authority within the meaning of section 50(b) of the Police (Scotland) Act 1967(b), any officer having the rank or status of assistant chief constable or (as the case may be) assistant commissioner, or any rank or status senior to that rank.”.

(2) After regulation 4(3) there is added—

“(4) In the application of paragraph (3)(a) above to a joint police board exercising the functions conferred under the Police (Scotland) Act 1967 on police authorities in terms of that Act, for paragraph (3)(a)(i) (ii) and (iii) there is substituted—

“(i) any persons who are employed by the joint police board to provide legal, financial or other professional advice in relation to the business of that joint police board;

(ii) any constable having the rank of chief constable or assistant chief constable;”.

#### **Evaluation of bids and tenders**

7.—(1) In regulation 5—

(a) there is substituted for paragraph (b)—

“(b) announcing who is to undertake or carry out the work later than the applicable limit”; and

(b) there is added at the end—

“(2) In this regulation “the applicable limit” means, in relation to the defined activity falling within section 2(2)(h) (housing management) of the 1988 Act(c), 120 days after the expiry of the period within which contractors are allowed to respond to the invitation to tender for the work; and, in relation to any other defined activity, 90 days after the expiry of that period.”.

(2) In regulation 6 the words “of providing” are substituted for the words “or providing”.

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(a) S.I. 1993/3228.

(b) 1967 c. 77.

(c) Paragraph (h) of section 2(2) is inserted by the Local Government Act 1988 (Competition) (Defined Activities) (Housing Management) Order 1994 (S.I. 1994/1671).

### Redundancy costs

8.—(1) In regulation 12(2) there is added at the end—

““relevant compensation” means—

- (a) compensation pursuant to the 1982 Regulations, the 1979 Regulations or the Local Government (Compensation for Redundancy) Regulations 1994(a) or the Local Government (Compensation for Redundancy) (Scotland) Regulations 1994(b); and
- (b) compensation under section 31 of the London County Council (General Powers) Act 1921(c).”

(2) In regulation 12(3) there is substituted for sub-paragraph (b)—

“(b) provided that the local authority is a qualifying local authority, an amount equal to the value of—

$$L + (15 \times A)$$

where—

L is the relevant compensation which would be payable to the eligible staff, during the year immediately following the date on which they cease to be employed by the local authority, by way of a lump sum, and

A is the relevant compensation which would be so payable to those staff by way of an annual sum.”.

### Prospective costs

9.—(1) After regulation 14 there is added—

“Indemnities

14A.—(1) For the purposes of this regulation “relevant staff” means the persons who would be dismissed as redundant if the local authority accepted one of the contractors’ tenders for the work.

(2) In a case where this regulation applies, any reasonable amount required from a local authority by a contractor by way of an indemnity against any costs which may be incurred by him by reason of the application of the 1981 Regulations to the contracts of employment of relevant staff shall be a prospective cost.

(3) This regulation applies where any evaluation made for the purpose of deciding who should undertake or carry out the work takes place on the basis that the 1981 Regulations will not apply to such contracts.”

(2) In regulation 5(a)(i) there is added, after the words “prospective cost”, the words “(other than an amount which is a prospective cost by reason of regulation 14A)”.

### Calculation of the present value of savings

10. In paragraph 3(4) of the Schedule the words “Table 2 of” are omitted.

Signed by authority of the Secretary of State for the Environment

15th May 1995

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

16th May 1995

*George Kynoch*  
Parliamentary Under Secretary of State,  
Scottish Office

Signed by authority of the Secretary of State for Wales

18th May 1995

*Gwilym Jones*  
Parliamentary Under Secretary of State,  
Welsh Office

(a) S.I. 1994/3025.

(b) S.I. 1994/3068.

(c) 1921 c. 1.

## EXPLANATORY NOTE

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

These Regulations provide for the amendment of the Local Government (Direct Service Organisations) (Competition) Regulations 1993 ("the principal regulations"), which make provision about the conduct of competitive tendering for the carrying out of certain work by local authorities and certain other authorities.

Regulation 4 establishes that regulation 2 of the principal regulations (periods for response to notice and invitation to tender) applies only in respect of tendering in pursuance of the Local Government Act 1988. Regulation 5 (periods elapsing before commencement of work) disapplies the requirement for an interval between a decision and work being undertaken in respect of work consisting of certain defined activities. Regulation 6 makes provision for the application of regulation 4 (preparation of bids) of the principal regulations in respect of conduct by elected members, and in relation to police authorities. Regulation 7 makes special provision for housing management work in relation to the time by which an authority must have announced the results of tendering. Regulation 8 amends the formula by reference to which allowable costs are calculated in evaluating tenders. Regulation 9 adds certain indemnities to the costs which, if taken into account in evaluating tenders, are not to give rise to action in respect of anti-competitive behaviour. Regulation 10 makes a minor amendment to the Schedule which provides for the method of calculating the present value of savings.

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