
STATUTORY INSTRUMENTS

1993 No. 2810

The Education and Libraries (Northern Ireland) Order 1993

PART III

PUBLIC SUPPLY OR WORKS CONTRACTS

Provisions supplementary to or consequential on Article 20

22.—(1) The Department may by order—

- (a) specify as a non-commercial matter for the purposes of Article 20 any other matter which appears to the Department to be irrelevant to the commercial purposes of public supply or works contracts of any description;
- (b) specify the criteria to be applied by a board in including persons in or excluding persons from an approved list;
- (c) specify questions relating to non-commercial matters which may be included in questionnaires circulated by boards to potential contractors in such cases as may be specified in the order.

(2) The power conferred by paragraph (1)(a) includes power to apply Article 20(5) and (6) to any matter specified in the order and to amend any definition in Article 19 of an expression used in any sub-paragraph of Article 20(4) without making any other provision.

(3) An order under paragraph (1) may include such consequential and transitional provisions as appear to the Department to be necessary or expedient.

(4) No order under paragraph (1) shall be made unless a draft of it has been laid before and approved by a resolution of the Assembly.

(5) The duty imposed by Article 20(1) does not create a criminal offence but—

- (a) in proceedings for judicial review, the persons who have a sufficient interest in the matter shall include any potential contractor or, in the case of a contract which has been made, former potential contractor (or, in any case, any body representing contractors), as such; and
- (b) a failure to comply with it is actionable by any person who, in consequence, suffers loss or damage.

(6) In any action under Article 20(1) by a person who has submitted a tender for a proposed public supply or works contract arising out of the exercise of functions in relation to the proposed contract the damages shall be limited to damages in respect of expenditure reasonably incurred by him for the purpose of submitting the tender.

(7) Nothing in paragraph (1)(a) or Article 20 implies that the exercise of any function regulated by that Article may not be impugned, in proceedings for judicial review, on the ground that it was exercised by reference to other matters than those which are non-commercial matters for the purposes of that Article.

(8) If a board, in relation to public supply or works contracts or any proposed such contract, as the case may be—

- (a) asks any question of any potential contractor relating to any non-commercial matter other than a question consideration of the answer to which is permitted by Article 21; or
- (b) submits to any potential contractor a draft contract or draft tender for a contract which includes terms or provisions relating to any non-commercial matter other than a term or provision the inclusion of which in the contract is permitted by Article 21,

the board shall be treated, for the purposes of Article 20, as exercising functions regulated by that Article by reference to non-commercial matters.