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STATUTORY INSTRUMENTS

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**1993 No. 2810**

**The Education and Libraries (Northern Ireland) Order 1993**

**PART II**  
**COMPETITION**

*Functional work: restrictions*

**Functional work: restrictions**

6.—(1) A board may not carry out functional work falling within a defined activity unless each of the 6 conditions is fulfilled.

(2) The conditions mentioned in paragraph (1) are those set out in Article 7, which shall have effect subject to Article 8.

(3) This Article applies only if the work falls within such a defined activity, is of such a description, is proposed to be carried out by such board or boards, and is proposed to be carried out on or after such date, as may be specified by regulations; and regulations may describe work by reference to a specified proportion of work of a particular description.

(4) Regulations may provide that where a board proposes to carry out functional work which falls within a defined activity specified in the regulations (whether or not by a virtue of Article 4(4) or (6)) and to which this Article would not otherwise apply, it shall (if the board so decides) be treated as work to which this Article applies.

(5) This Article applies even if the work forms part of work begun before any date specified in the regulations, but references in this Article and the following provisions of this Part to the work do not include references to any work carried out before such date.

**The conditions**

7.—(1) The first condition is that, before carrying out the work, the board published, in at least 2 newspapers circulating in the locality in which the work is to be carried out and at least one publication circulating among persons who carry out work of the kind concerned, a notice containing—

- (a) a brief description of the work;
- (b) a statement that during a period specified in the notice any person may inspect a detailed specification of the work free of charge at a place and time specified in the notice;
- (c) a statement that during that period any person will be supplied with a copy of the detailed specification on request and on payment of such charge as is specified in the notice;
- (d) a statement that any person who may wish to carry out the work should notify the board of that fact within a period specified in the notice; and
- (e) a statement that the board intends to make, in accordance with the third condition, an invitation to carry out the work.

- (2) The second condition is that—
- (a) the periods, place, time and charge specified in the notice are reasonable;
  - (b) before carrying out the work, the board made a detailed specification of the work available for inspection, and copies of it available for supply, in accordance with the notice; and
  - (c) the detailed specification includes a statement of the period during which the work is to be carried out.
- (3) The third condition is that, if any person notified the board in accordance with the statement under paragraph (1)(d), the board made an invitation to carry out the work in accordance with the following rules—
- (a) the invitation was made by the board before carrying out the work, and not less than 3 nor more than 6 months after complying with the first condition;
  - (b) if more than 3 persons who are not boards notified the board, at least 3 of them were invited;
  - (c) if less than 4 persons who are not boards notified the board, each of them was invited;
  - (d) if another board or boards notified the board, such one or more (if any) of them as the board decided was invited.
- (4) Regulations may amend sub-paragraphs (b) and (c) of paragraph (3) so as to vary the number of persons who are not boards who must be invited to carry out work in particular circumstances.
- (5) The fourth condition is that before carrying out the work the board, through its direct labour organisation or a similar organisation, prepared a written bid indicating a wish to carry out the work and the bid was prepared in accordance with the following rules—
- (a) if the board would, assuming it were an independent contractor, charge for carrying out the work, the bid must provide for an item to be credited to any account kept (or to be kept) by the board as regards the work under Article 9;
  - (b) if the board would, assuming it were an independent contractor, pay for the right to carry out the work, the bid must provide for an item to be debited to any such account;
  - (c) in the case of an item to be credited, the bid must state either what the board intends as its maximum amount or the method by which it intends to calculate its maximum amount;
  - (d) in the case of an item to be debited, the bid must state either what the board intends as its minimum amount or the method by which it intends to calculate its minimum amount; and
  - (e) a statement mentioned in sub-paragraph (c) or (d) may include provision for any intended amount or method to vary with changes in circumstances.
- (6) The fifth condition is that the board, in reaching the decision that it should carry out the work and in doing anything else (whether or not required by this Part) in connection with the work before reaching the decision, did not act in a manner having the effect or intended or likely to have the effect of restricting, distorting or preventing competition.
- (7) The sixth condition is that in carrying out the work the board complied with the detailed specification of it mentioned in paragraphs (1) and (2).

**The conditions: further provisions**

- 8.—(1) Regulations may provide that the second condition shall not be treated as fulfilled if the period stated by virtue of Article 7(2)(c)—
- (a) exceeds a period specified in the regulations; or
  - (b) is less than another period so specified.
- (2) Regulations may provide that the third condition shall not be treated as fulfilled unless—

- (a) the contents of any invitation included prescribed matters (which may relate to the time allowed for responding, the method of responding, or otherwise); and
  - (b) if any response was made to any invitation, before carrying out the work the board complied with prescribed requirements as to responses (which may include requirements to disregard certain responses, requirements about the keeping or opening of responses, or otherwise).
- (3) Regulations may provide that the fourth condition shall not be treated as fulfilled unless before carrying out the work the board complied with prescribed requirements as to the bid (which may include requirements about the preparation, keeping or opening of the bid, or otherwise).
- (4) Regulations may provide that the fifth condition shall not be treated as fulfilled unless—
- (a) in accordance with prescribed requirements there is prepared and certified a document which appraises and fulfils such other conditions as may be prescribed with respect to responses falling within paragraph (2) and the bid referred to in paragraph (3); and
  - (b) at such time or times (prior to reaching the decision referred to in Article 7(6)) as may be prescribed, copies of that document are provided or made available in accordance with any prescribed requirements.
- (5) Where any document is provided or made available in accordance with the requirements of regulations under paragraph (4), the publication thereby of any defamatory matter in the document shall be privileged unless the publication is proved to be made with malice.