

*Draft Order laid before Parliament under section 19(3) of the Local Government Act 1999, for approval by resolution of each House of Parliament*

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DRAFT STATUTORY INSTRUMENTS

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**2001 No.**

**LOCAL GOVERNMENT, ENGLAND  
LOCAL GOVERNMENT, WALES**

**The Local Government Best Value (Exclusion  
of Non-commercial Considerations) Order 2001**

<i>Made</i>	- - - -	<i>2001</i>
<i>Coming into force</i>	- -	<i>2001</i>

The Secretary of State, in exercise of the powers conferred upon him by section 19(1) and (2) of the Local Government Act 1999(1) and of all other powers enabling him in that behalf hereby makes the following Order, a draft of which has been laid before, and approved by resolution of, each House of Parliament:

**Citation, commencement and interpretation**

1.—(1) This Order may be cited as the Local Government Best Value (Exclusion of Non-commercial Considerations) Order 2001 and shall come into force on the day after the day on which it is made.

(2) In this Order—

“the 1988 Act” means the Local Government Act 1988(2);

“the 1999 Act” means the Local Government Act 1999;

“public supply or works contract” means a contract for the supply of goods or materials, for the supply of services or for the execution of works.

**Application**

2.—(1) This Order applies—

(a) in relation to England, to all best value authorities;

(b) in relation to Wales, only to authorities falling within section 1(1)(d) or (e) of the 1999 Act (police and fire authorities).

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(1) 1999 c. 27. For the application of the Act to Wales, see section 29.  
(2) 1988 c. 9.

**Matters not to be non-commercial matters in relation to best value authorities**

3. The matters specified in section 17(5)(a) and the conduct of contractors or workers in industrial disputes between them as specified in section 17(5)(d) of the 1988 Act (Local and other public authority contracts: exclusion of non-commercial considerations) shall cease to be non-commercial matters for the purposes of section 17 of that Act—

- (a) to the extent that a best value authority considers it necessary or expedient, in order to permit or facilitate compliance with the requirements of Part I of the 1999 Act (Best Value), to exercise the functions regulated by that section in relation to its public supply or works contracts with reference to those matters; or
- (b) for the purposes of any functions regulated by that section in relation to a public supply or works contract which involves a transfer of staff to which the provisions of the Transfer of Undertakings (Protection of Employment) Regulations 1981<sup>(3)</sup> may apply.

Signed by the authority of the Secretary of State

*Minister of State,*  
Department of the Environment, Transport and  
the Regions

2001

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(3) S.I.1981/1794 as amended by S.I. 1987/442 and Section 33 of the Trade Union Reform and Employment Rights Act 1993 (1993 c. 19).

## EXPLANATORY NOTE

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

Section 17(5) of the Local Government Act 1988 (the “1988 Act”) contains a list of matters (non-commercial matters) by reference to which public authorities may not exercise the functions listed in section 17(4) of that Act, which include functions in relation to proposed public supply or works contracts with the authority.

This Order provides for certain matters specified in the Order to cease to be non-commercial matters for the purposes of section 17 of the 1988 Act. The matters concerned relate to the terms and conditions of employment etc. of a contractor’s workforce and the conduct of contractors or their workers in industrial disputes. But, under the Order, those matters cease to be non-commercial matters only so far as necessary or expedient to permit or facilitate compliance with the best value requirements of Part I of the Local Government Act 1999; or where there is a transfer of staff to which the Transfer of Undertakings (Protection of Employment) Regulations 1981 may apply.

This Order applies to all best value authorities in England and police and fire authorities in Wales.