
STATUTORY INSTRUMENTS

1991 No. 719

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

The Litter Etc. (Transitional Provisions) Regulations 1991

<i>Made</i>	- - - -	<i>19th March 1991</i>
<i>Laid before Parliament</i>		<i>19th March 1991</i>
<i>Coming into force</i>	- -	<i>1st April 1991</i>

The Secretary of State, in exercise of the powers conferred on him by section 97 of the Environmental Protection Act 1990(1), and of all powers enabling him in that behalf, hereby makes the following Regulations:—

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Litter Etc. (Transitional Provisions) Regulations 1991 and shall come into force on 1st April 1991.

(2) Regulations 5 and 6 extend to England and Wales only.

Interpretation

2. In these Regulations—

- (a) “the 1988 Act” means the Local Government Act 1988(2);
“the 1990 Act” means the Environmental Protection Act 1990;
“functional work” and “works contract” have the same meaning as in Part I of the 1988 Act(3);
“litter” includes refuse;
“relevant functional work” means functional work falling within the defined activity mentioned in section 2(2)(c) of the 1988 Act (other cleaning); and
- (b) in relation to Scotland, “highway” means “road”.

(1) 1990 c. 43.

(2) 1988 c. 9.

(3) “Functional work” and “works contract” are defined in section 3.

Duty to keep land and highways clear of litter etc.

3.—(1) A local authority shall be taken to be complying, as respects any highway, with its duty under section 89(1)(a) of the 1990 Act if—

- (a) there is in force a contract entered into before 1st April 1991 between that authority and an independent contractor under which that contractor is required to remove litter from that highway, and
- (b) the condition specified in paragraph (5) is fulfilled.

(2) A local authority shall be taken to be complying, as respects any land, with its duty under section 89(1)(c) of the 1990 Act if—

- (a) there is in force a contract entered into before 1st April 1991 between that authority and an independent contractor under which that contractor is required to remove litter from that land, and
- (b) the condition specified in paragraph (5) is fulfilled.

(3) An educational body which is a local authority (in Scotland), or is the governing body of an educational institution maintained by a local authority (in England and Wales), shall be taken to be complying, as respects any land, with its duty under section 89(1)(f) of the 1990 Act if—

- (a) there is in force a contract entered into before 1st April 1991 between that authority and an independent contractor under which that contractor is required to remove litter from that land, and
- (b) the condition specified in paragraph (5) is fulfilled.

(4) A local authority shall be taken to be complying, as respects any highway, with its duty under section 89(2) of the 1990 Act if—

- (a) there is in force a contract entered into before 1st April 1991 between that authority and an independent contractor under which that contractor is required to clean that highway,
- (b) that contract is not a relevant contract within the meaning of regulation 6, and
- (c) the condition specified in paragraph (5) is fulfilled.

(5) The condition referred to above is that the authority can demonstrate—

- (a) that the contractor is fully discharging his obligations under the contract;
- (b) that, but for this regulation, the discharge of those obligations would be insufficient to enable the authority or, as the case may be, the educational body, to comply with the relevant duty under section 89 of the 1990 Act;
- (c) that the authority has used its best endeavours to negotiate such variations to the contract as would be required to ensure that the performance of the contractor's obligations would be sufficient to enable the authority or, as the case may be, the educational body, to comply with that duty;
- (d) that the contractor is not prepared to agree to such variations or is only prepared to do so on unreasonable terms; and
- (e) that the authority has no right to terminate the contract.

Additional work carried out by local authorities

4.—(1) In this regulation “relevant functional work” does not include any work consisting of the cleaning by a local authority of a highway where that authority did not carry out the cleaning of that highway as functional work before 1st April 1991.

(2) This regulation applies where—

- (a) either—

- (i) section 6 of the 1988 Act applies to relevant functional work if it is carried out by a local authority on 1st April 1991; or
 - (ii) that section does not so apply, but a local authority has, before that date, carried out relevant functional work in respect of which each of the six conditions set out in section 7 of the 1988 Act is fulfilled;
- (b) the authority carries out relevant functional work in respect of any land or highway on or after that date; and
- (c) in order to comply with its duty under section 89 of the 1990 Act, or (in England and Wales) to enable an educational body which is the governing body of an educational institution maintained by the authority to comply with its duty under that section, in respect of that land or highway, the authority is required to carry out more relevant functional work than it carried out before 1st April 1991.
- (3) Where this regulation applies, until the relevant date, section 6 of the 1988 Act shall not apply to the additional relevant functional work carried out by the authority in order to enable it to comply with its duty under section 89 of the 1990 Act in respect of the land or highway concerned; but until the relevant date—
- (a) the authority shall keep a separate account for each financial year as regards all such additional work which is carried out by it in that year; and
 - (b) no item relating to that additional work may be entered in any account kept under section 9 of the 1988 Act.
- (4) Where this regulation applies in the circumstances described in paragraph (2)(a)(ii), and the local authority carries out additional relevant functional work to which, by virtue of paragraph (3), section 6 of the 1988 Act does not apply, that section shall apply to any other relevant functional work which is carried out on or after 1st April 1991 by that authority and in respect of which the six conditions set out in section 7 of that Act are fulfilled.
- (5) Paragraph (6) applies to a local authority if the cost to that authority of carrying out the additional work referred to in paragraph (3) in the period beginning on 1st April 1991 and ending on 30th September 1991 is equal to more than 20% of the cost to that authority of carrying out other relevant functional work in that period.
- (6) On or after the relevant date, an authority to which this paragraph applies may not carry out any relevant functional work unless the authority has carried out a further competitive tendering exercise in the course of which each of the first five conditions set out in section 7 of the 1988 Act is fulfilled in respect of that work.
- (7) In this regulation, “the relevant date” means the date ascertained in accordance with paragraphs (8) to (10).
- (8) In the case of a local authority to which paragraph (6) applies, the relevant date is the date shown in column 2 of the following Table opposite the date in column 1 which is the date as from which section 6 of the 1988 Act first applies to relevant functional work carried out by that authority⁽⁴⁾ (other than by virtue of paragraph (4) of this regulation or regulation 5(5)):

(4) The dates in column 1 are specified: in relation to England by the Local Government Act 1988 (Defined Activities) (Competition) (England) Regulations 1988 (S.I. 1988/1371, as amended by S.I. 1990/2082); in relation to Wales by the Local Government Act 1988 (Defined Activities) (Competition) (Wales) Regulations 1988 (S.I. 1988/1468, as amended by S.I. 1989/138, 1990/2280); and in relation to Scotland by the Local Government Act 1988 (Defined Activities) (Competition) (Scotland) Regulations 1988 (S.I. 1988/1413, as amended by S.I. 1990/2286).

TABLE

1	2
1st August 1989	1st October 1992
1st January 1990	1st January 1993
1st August 1990	1st August 1993
1st August 1991	1st August 1993
1st January 1992	1st August 1993.

(9) In the case of a local authority to which paragraph (6) does not apply, the relevant date is the date on or after which, if that authority proposed to continue to carry out relevant functional work, it would be prohibited by section 6 of the 1988 Act from doing so unless it had carried out a further competitive tendering exercise in the course of which each of the first five conditions set out in section 7 of that Act was fulfilled in respect of that work.

(10) Nothing in this regulation shall prevent a local authority from entering into new arrangements in accordance with Part I of the 1988 Act for the carrying out of relevant functional work before the date ascertained in accordance with paragraphs (8) and (9), and where a local authority does so the relevant date shall be the date on which those arrangements come into operation.

Highway cleaning: functional work

5.—(1) This regulation applies where—

(a) either—

- (i) section 6 of the 1988 Act applies to relevant functional work if it is carried out by a local authority on 1st April 1991; or
- (ii) that section does not so apply, but a local authority has, before that date, carried out relevant functional work in respect of which each of the six conditions set out in section 7 of the 1988 Act is fulfilled;

- (b) by virtue of section 89(2) of the 1990 Act, it is the duty of that local authority to ensure that a highway is, so far as is practicable, kept clean;
- (c) the functional work carried out by that local authority before 1st April 1991 did not include the cleaning of that highway; and
- (d) until section 89(2) of the 1990 Act came into force, it was the duty of a different authority to clean that highway.

(2) Subject to paragraph (3), where this regulation applies, until the material date, section 6 of the 1988 Act shall not apply to relevant functional work carried out by the local authority on or after 1st April 1991 in order to comply, in respect of such a highway as is mentioned in paragraph (1), with its duty under section 89(2) of the 1990 Act; but, until the material date—

- (a) the authority shall keep a separate account for each financial year as regards all such work which is carried out by it in that year; and
- (b) no item relating to that work may be entered in any account kept under section 9 of the 1988 Act.

(3) Where—

- (a) in consequence of the 1990 Act, it has ceased to be the duty of the highway authority for the highway concerned to clean that highway;

- (b) there is in force on 31st March 1991 a contract between the highway authority and an independent contractor which provides for the contractor to clean that highway; and
- (c) if it had not ceased to be the duty of the highway authority to clean that highway, that contract would have continued in force after that date,

paragraph (2) shall apply only if the local authority has used its best endeavours to enter into satisfactory arrangements with the contractor for the cleaning of the highway during the period in which the contract would have remained in force but has been unable to do so.

(4) In paragraph (2) “the material date” means the date on or after which, if the local authority concerned proposed to continue to carry out relevant functional work, it would be prohibited by section 6 of the 1988 Act from doing so unless it had carried out a further competitive tendering exercise in the course of which each of the first five conditions set out in section 7 of that Act was fulfilled in respect of that work.

(5) Where this regulation applies in the circumstances described in paragraph (1)(a)(ii), and the local authority carries out relevant functional work to which, by virtue of paragraph (2), section 6 of the 1988 Act does not apply, that section shall apply to any other relevant functional work which is carried out on or after 1st April 1991 by that authority and in respect of which the six conditions set out in section 7 of that Act are fulfilled.

Highway cleaning: works contracts

6.—(1) In this regulation—

“the cleaning authority”, in relation to any highway, means the local authority which carried out the cleaning of that highway immediately before 1st April 1991, either in its capacity as the highway authority or on behalf of the highway authority;

“the duty authority”, in relation to any highway, means the local authority whose duty it is under section 89(2) of the 1990 Act on and after 1st April 1991 to ensure that that highway is, so far as is practicable, kept clean, but which is not the highway authority for that highway;

“previous work”, in relation to any highway, means work carried out immediately before 1st April 1991 and consisting of the cleaning of that highway;

“the relevant date” means—

- (a) where the cleaning authority carried out the previous work for another authority under a works contract, the date of expiry of the period during which that contract required the work to be carried out;
- (b) where the cleaning authority carried out the previous work as functional work, the date after which, if that authority had proposed to continue to carry out work consisting of the cleaning of the highway concerned, it would have been prohibited by section 6 of the 1988 Act from doing so unless it had carried out a competitive tendering exercise (or, if each of the six conditions set out in section 7 of that Act was fulfilled in respect of the previous work, a further competitive tendering exercise) in the course of which each of the first five conditions set out in section 7 of that Act was fulfilled in respect of that work.

(2) This regulation applies where—

- (a) the cleaning authority and the duty authority propose to enter into a contract under which the cleaning authority is to carry out the cleaning of a highway for the duty authority on or after 1st April 1991; and
- (b) that contract does not provide for the cleaning authority to carry out work after the relevant date.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(3) Where this regulation applies, subsection (1) of section 4 of the 1988 Act shall not apply to the proposed contract, but—

- (a) the proposed contract shall for all other purposes of that Act be one to which that section applies; and
- (b) if section 6 of that Act applied to the previous work when it was carried out before 1st April 1991 by the cleaning authority, or if that work was carried out before that date by the cleaning authority under a works contract to which section 4 of that Act applied, the cleaning authority shall, in respect of the proposed contract, enter in the appropriate account kept under section 9 of that Act the items which it would have been required to enter if it had continued to carry out the previous work as functional work or, as the case may be, under the works contract and no other items.

19th March 1991

Michael Heseltine
One of Her Majesty's Principal Secretaries of
State

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make transitional provision in connection with the work carried out by local authorities in order to perform the duties imposed on local authorities and educational bodies by section 89 of the Environmental Protection Act 1990 (“the 1990 Act”).

Section 89(1) of the 1990 Act makes it the duty of (inter alia) local authorities and educational bodies to ensure that certain land under their control is kept clear of litter and refuse. Section 89(2) makes it the duty of certain local authorities to ensure that highways (or in Scotland, roads) are kept clean.

Part I of the Local Government Act 1988 (“the 1988 Act”) prohibits local authorities from carrying out work falling within certain defined activities unless they have first subjected it to competition. One of these activities – “other cleaning”, which is defined in paragraph 3 of Schedule 1 to the 1988 Act – includes the removal of litter and the cleaning of streets.

Regulation 3 deals with the case where a local authority has arranged for an independent contractor to carry out the work of removing litter or cleaning a highway or road. In such a case the authority is to be treated as having complied with its duty under section 89 of the 1990 Act if the conditions specified in paragraph (5) are satisfied. Where a local authority has entered into such a contract in respect of the land of an educational body, that body will be similarly treated. The conditions are essentially that the contract is being properly performed and that it is not possible to renegotiate it on reasonable terms.

Regulation 4 applies where a local authority is itself already carrying out litter removal or highway cleaning work after having complied with the requirements of Part I of the 1988 Act, and is required to carry out additional work of that nature in order to comply with its duty under section 89 of the 1990 Act. In such a case, until the relevant date, the authority may carry out any such additional work without subjecting it to competition under the 1988 Act. If the cost of the additional work is more than 20% of the cost of the work already being carried out, the authority is prohibited from carrying out any “other cleaning” work on or after the relevant date, and the relevant date is ascertained in accordance with paragraph (7) by reference to the date as from which section 6 of the 1988 Act first applies to “other cleaning” work. In any other case, the relevant date is the day after the existing arrangements for carrying out “other cleaning” work expire or are otherwise terminated.

Regulations 5 and 6, which apply only to England and Wales, make provision in connection with the transfer under the 1990 Act of the duty to keep highways clean from the highway authority to the local authority.

Regulation 5 applies where the 1990 Act transfers the duty to clean a highway or road to a local authority which did not previously carry out the work of cleaning it. In such a case, until the material date, the local authority may carry out the necessary work without subjecting it to competition under the 1988 Act, but only if it has used its best endeavours to reach agreement with any independent contractor who previously carried out the work. The material date is the day after its existing arrangements for carrying out “other cleaning” work expire or are otherwise terminated.

Regulation 6 permits a local authority which was carrying out highway cleaning work before 1st April 1991 to enter into a contract to carry out that work for the local authority whose duty it is on and after that date to ensure that the highway or road is kept clean without fulfilling the conditions in section 4 of the 1988 Act.

Regulations 4, 5 and 6 also contain certain requirements relating to the accounts which are required to be kept under section 9 of the 1988 Act.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.