
STATUTORY INSTRUMENTS

1997 No. 999

LOCAL GOVERNMENT, ENGLAND AND WALES

WALES

**The Local Authorities (Direct Labour Organisations)
(Competition) (Wales) Regulations 1997**

<i>Made</i>	- - - -	<i>20th March 1997</i>
<i>Laid before Parliament</i>		<i>26th March 1997</i>
<i>Coming into force</i>	- -	<i>17th April 1997</i>

The Secretary of State for Wales, in exercise of the powers conferred on him by sections 7(1), (2), (4), (5) and (6), 9(3) and 23(1) of the Local Government, Planning and Land Act 1980⁽¹⁾, and of all other powers enabling him in that behalf, hereby makes the following Regulations:—

Citation and commencement

1. These Regulations may be cited as the Local Authorities (Direct Labour Organisations) (Competition) (Wales) Regulations 1997 and shall come into force on 17th April 1997.

Interpretation

2.—(1) In these Regulations, except where the context otherwise requires—

“the Act” means the Local Government, Planning and Land Act 1980;

“contractual highway work” means general highway works carried out by a local authority by placing a contract for the doing of the work by another person (either directly or, in whole or in part, through sub-contractors) which provides, or provides principally, for the carrying out of general highway works, the value of which does not exceed £25,000;

“emergency work” means work of any description, the necessity for which could not reasonably have been foreseen by the local authority concerned and which is—

- (a) required to avert, alleviate or eradicate in their area, or any part of it, the effects or potential effects of any emergency or disaster which involves or is likely to involve risk of serious damage to or destruction of property or risk of injury or danger to health or life;

(1) 1980 c. 65; section 7 was amended by the Local Government Act 1988 (c. 9), Schedule 6, paragraph 2 and by the Local Government Act 1992 (c. 19), Schedule 1, paragraph 1 and section 23(1) was amended by the Local Government Act 1992, Schedule 1, paragraph 9.

(b) required to be put in hand as a matter of urgency within 48 hours of the emergency or disaster occurring; and

(c) not work on a scale or of a nature normally undertaken by that local authority;

“estimated cost”, in relation to a job, means the aggregate of the amounts which a local authority will credit to their DLO revenue account⁽²⁾ in respect of the carrying out of all the items of construction or maintenance work comprised in that job—

(a) so far as such amounts will fall to be determined in accordance with a written statement prepared in compliance with section 9(2)(a) of the Act⁽³⁾, as so determined; and

(b) so far as such amounts will fall to be determined in accordance with a method specified in a written statement prepared in accordance with section 9(2)(b) of the Act, as estimated in accordance with that method;

“general highway works” has the meaning given to it in section 10(3) of the Act⁽⁴⁾;

“job” means all the functional work⁽⁵⁾ which can reasonably be carried out most economically and efficiently under one arrangement;

“local authority” means an authority to which these Regulations apply by virtue of regulation 3;

“relevant highway work” means general highway works comprised in a works contract which provides, or provides principally, for, or in a job which consists, or consists principally, of general highway works and for which the value of the contract or the estimated cost of the job does not exceed £25,000;

“works of maintenance” means works of maintenance within the meaning of the Local Authorities (Goods and Services) Act 1970⁽⁶⁾ not being general highway works or the maintenance of a sewer; and

“works of new construction” means building or civil engineering works of any description not being general highway works, the construction or maintenance of a sewer or works of maintenance.

(2) Subject to paragraph (3) below, in ascertaining (for the purposes of these Regulations) the description of work for which a contract principally provides, or of which a job principally consists, regard shall be had only to—

(a) the value of the contract so far as it is attributable to works of each description mentioned in paragraphs (a) to (d) of regulation 4 and comprised in the contract, or

(b) the estimated cost of the job so far as it is attributable to works of each description mentioned in paragraphs (a) to (d) of regulation 4 and comprised in the job,

and if works of two or more descriptions mentioned in paragraphs (a) to (d) of regulation 4 have the same value or estimated cost (and no other such works exceed that value or cost) the contract or, as the case may be, job shall be treated as providing principally for works of each of those descriptions.

(3) In ascertaining for the purposes of paragraph (2) or regulation 7 or 9 the description of work for which a contract principally provides, or of which a job principally consists, no regard shall be had to the value of the contract or the estimated cost of the job so far as in either case it is attributable to the construction or maintenance of a sewer.

(2) For the meaning of “DLO revenue account”, see sections 10(1) and 20(1) of the Act.

(3) Section 9(2) was amended by the Local Government Act 1992, Schedule 1, paragraph 2(1).

(4) Section 10(3) was amended by the Local Government Act 1988, Schedule 6, paragraph 4.

(5) For the meaning of “functional work”, see sections 8 and 20(1) of the Act. Section 8 was amended by the Water Act 1989 (c. 15), Schedule 25, paragraph 61(2) and by the Local Government etc. (Scotland) Act 1994 (c. 39), Schedule 13, paragraph 120(3) and Schedule 14.

(6) 1970 c. 39.

Application

- 3.—(1) These Regulations apply to local authorities in Wales(7)
- (2) These Regulations apply to—
- (a) a works contract entered into on or after 1st October 1997; and
 - (b) functional work to be carried out on or after that date.

Prescribed amount for works contracts

4. Subject to regulation 8, for the purposes of section 7(1)(a) of the Act (prescribed amounts for certain works contracts) the following amounts are prescribed for works contracts(8) of the following descriptions, namely, for a contract which provides, or provides principally, for the carrying out of—
- (a) general highway works, £25,000;
 - (b) the construction or maintenance of a sewer, £50,000;
 - (c) works of new construction, £50,000;
 - (d) works of maintenance, £10,000.

Treatment of certain works contracts as a single contract

5. For the purposes of determining whether the value of a works contract exceeds the amount prescribed by regulation 4, the value of any other contract made within the preceding six months by the local authority in question for work of the same or similar description on the same site or surface or on an adjacent site or surface shall be treated as forming part of the value of that contract.

Requirement to tender for certain works contracts

6. Subject to regulation 8, the following condition is prescribed for the purposes of section 7(1)(b) of the Act (conditions to be complied with in the case of works contracts whose value is equal to or less than the prescribed amount) in relation to a works contract to which this regulation applies, namely, that the contract is entered into as the result of acceptance of a tender within the meaning of section 7(3) of the Act(9)

Application of Regulation 6

- 7.—(1) Regulation 6 applies—
- (a) to any works contract of a value which does not exceed £25,000 providing, or providing principally, for the carrying out of general highway works if the value of the contract together with the value of all relevant highway work previously undertaken by the local authority otherwise than in accordance with section 7 of the Act or the conditions mentioned in section 9(3)(a) of the Act in the same financial year exceeds the relevant limit;
 - (b) to any works contract of a value which does not exceed £50,000 providing, or providing principally, for the carrying out of works of new construction;

(7) For the meaning of “local authority” in relation to Wales, see paragraph (aa) of the definition in section 20(1) of the Act, as inserted by the Local Government (Wales) Act 1994 (c. 19), Schedule 16, paragraph 57(3), and section 19 of the Act. Section 19 was amended by the Local Government Act 1988, Schedule 7, Part III. Also by virtue of the Environment Act 1995 (c. 25), Schedule 8, paragraph 8(1), Part III of the Act has effect as if a National Park authority were a local authority for the purposes of that Part.

(8) For the meaning of “works contract”, see sections 5(1) and 20(1) of the Act. Section 5(1) was amended by the Local Government Act 1985 (c. 51), Schedule 17.

(9) Section 7(3) was amended by the Local Government Act 1988, Schedule 6, paragraph 2.

(c) to any works contract of a value which does not exceed £10,000 providing, or providing principally, for the carrying out of works of maintenance.

(2) For the purpose of paragraph (1)(a), the relevant limit is forty per cent. of the aggregate value of all relevant highway work undertaken and all contractual highway work carried out by the authority in the immediately preceding financial year.

Exempted works contracts

8.—(1) Section 7(1) of the Act shall not apply to works contracts of any of the following descriptions—

- (a) a contract for the carrying out of emergency work;
- (b) a contract for the gritting of, or the clearing of snow from, highways; or
- (c) a contract which satisfies each of the following conditions—
 - (i) it is a contract for the carrying out of works of new construction, general highway works or for the construction of a sewer;
 - (ii) it is a further contract the value of which does not exceed by more than ten per cent. the value of a former contract of a similar description awarded to the local authority at any time in the immediately preceding period of 12 months and in relation to which the value of each of the separate items of work comprised and priced in the contract does not exceed by more than ten per cent. the value of each corresponding separate item of work (if any) comprised and priced in the former contract; and
 - (iii) the work comprised in the contract is to be carried out on the same site or surface as the work comprised in the former contract or on sites or surfaces adjacent to those on which the work comprised in the former contract has been or is to be carried out.

(2) For the purposes of this regulation a contract is a former contract if, and only if—

- (a) it was made as the result of an invitation to tender which was extended to at least three other persons who were not, or included at least three other persons who were not, local authorities or development bodies for the purposes of Part III of the Act⁽¹⁰⁾;
- (b) the local authority in question submitted the lowest tender following that invitation; and
- (c) it has not been renewed (either by extension or the making of a new contract for work of a similar description) unless the invitation to tender, as a result of which it was awarded, specifically referred to the award to the successful contractor of one or more further contracts.

Regulated functional work

9.—(1) Subject to regulation 10, a local authority may not, unless they have first complied with the conditions mentioned in section 9(3)(a) of the Act⁽¹¹⁾, as well as with those in section 9(2), undertake functional work of any of the following descriptions—

⁽¹⁰⁾ For the meaning of “local authority”, in relation to the application of Part III of the Act, see the full definition in section 20(1) of the Act and the amendment and additional provision referred to in the footnote to regulation 3(1). The full definition has also been amended by the Local Government Act 1988, Schedule 6, paragraph 10(4), by the Education Reform Act 1988 (c. 40), Schedule 13, Part I, by the Police and Magistrates’ Courts Act 1994 (c. 29), Schedule 4, Part I, paragraph 20 and by the Local Government etc. (Scotland) Act 1994, Schedule 13, paragraph 120(4). For the meaning of “development body” see the definition of that term in the said section 20(1) to which there are amendments by the New Towns Act 1981 (c. 64), Schedule 12, paragraph 28, and by the Local Government Act 1988, Schedule 6, paragraph 10(3).

⁽¹¹⁾ These conditions are specified in section 9(4) of the Act which was amended by the Local Government Act 1988, Schedule 6, paragraph 3 and by the Local Government Act 1992, Schedule 1, paragraph 2. The Local Government (Direct Service Organisations) (Competition) Regulations 1993 (S.I. 1993/848), as amended by S.I. 1995/1336 and S.I. 1996/1680, have been made in part under powers contained in section 9(4).

- (a) a job consisting, or consisting principally, of general highway works where the estimated cost of the job exceeds £25,000;
 - (b) a job consisting, or consisting principally of general highway works where the estimated cost of the job does not exceed £25,000 if the estimated cost of the job together with the aggregate value of all relevant highway work previously undertaken by the local authority in question otherwise than in accordance with section 7 of the Act or the conditions mentioned in section 9(3)(a) of the Act in the same financial year exceeds the relevant limit;
 - (c) a job consisting, or consisting principally, of the construction or maintenance of a sewer where the estimated cost of the job exceeds £50,000;
 - (d) a job consisting, or consisting principally, of works of new construction;
 - (e) a job consisting, or consisting principally, of works of maintenance;
- (2) For the purposes of paragraph (1)(b) the relevant limit is forty per cent. of the aggregate value of all relevant highway work undertaken and all contractual highway work carried out by that authority in the immediately preceding financial year.

Exempted functional work

- 10.**—(1) Regulation 9 shall not apply to functional work of the following descriptions:—
- (a) emergency work;
 - (b) the gritting of, or the clearing of snow from, highways;
 - (c) work undertaken for the purposes of a Crown Court; and
 - (d) work comprising a job which satisfies each of the following conditions—
 - (i) it is a job for the carrying out of works of new construction, general highway works or for the construction of a sewer;
 - (ii) it is a further job the estimated cost of which does not exceed by more than ten per cent. the estimated cost of a former job of a similar description undertaken by the local authority in question in the immediately preceding 12 months and in relation to which the estimated cost of each separate item of work comprised and priced in the job does not exceed by more than ten per cent. the estimated cost of each corresponding item of work (if any) comprised and priced in the former job; and
 - (iii) the work comprised in the job is to be carried out on the same site or surface as the work comprised in the former job or on sites or surfaces adjacent to those on which the work comprised in the former job has been or is to be carried out.
- (2) For the purposes of this regulation a job is a former job if, and only if—
- (a) it was undertaken following an invitation to tender which was extended to at least three other persons who were not, or included at least three other persons who were not, local authorities or development bodies for the purposes of Part III of the Act;
 - (b) the estimated cost of the job submitted by the local authority in question was lower than the lowest tender submitted following that invitation; and
 - (c) the job has not been renewed (either by extension of time or the undertaking of a new job of a similar description) unless the invitation to tender following which it was undertaken specifically referred to the award to the successful tenderer of one or more further contracts.

Conditional functional work

11.—(1) Subject to paragraph (3) below, a local authority shall not, unless they have first complied with the conditions specified in paragraph (2) below, as well as with the terms of section 9(2) of the Act, undertake functional work which is—

- (a) the gritting of, or the clearing of snow from, highways; or
- (b) a job consisting or consisting principally of general highway works where—
 - (i) the estimated cost of the job does not exceed £25,000; and
 - (ii) the job is not within regulation 9(1)(b) above.

(2) The conditions mentioned in paragraph (1) above are—

- (a) that the authority shall be satisfied that the amount for the functional work in question to be credited in terms of the written statement required by section 9(2) of the Act is reasonable, having regard to any previous estimate of the cost of the work made by the authority and their knowledge of how much it would be likely to cost for a person other than the authority to carry out the work; and
- (b) that the authority shall put on public display at their principal office a notice summarising the contents of the statement required by section 9(2) of the Act in respect of the functional work in question.

(3) Paragraph (1) above shall not apply to functional work which the authority are undertaking after complying with the conditions mentioned in section 9(3)(a) of the Act.

Disapplication

12. The Local Government, Planning and Land Act 1980 (Competition) (Wales) Regulations 1994(12) shall not apply to any works contract or functional work to which these Regulations apply.

Signed by authority of the Secretary of State for Wales

Gwilym Jones
Parliamentary Under Secretary of State, Welsh
Office

20th March 1997

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part III of the Local Government, Planning and Land Act 1980 (“the 1980 Act”) requires local authorities (including authorities who are treated as local authorities for this purpose) and development bodies, before undertaking construction or maintenance work through their direct labour organisations (DLOs), to have satisfied certain requirements as respect competitive tendering.

The Regulations apply only to local authorities in Wales, namely, county councils, county borough councils, police authorities, National Park authorities and joint committees of such authorities (regulation 3). They replace the Local Government, Planning and Land Act 1980 (Competition) (Wales) Regulations 1994 (S.I. 1994/338) (“the 1994 Regulations”) as from 1st October 1997. The 1994 Regulations had themselves replaced the Local Government (Direct Labour Organisations) (Competition) Regulations 1989 (“the 1989 Regulations”) (S.I. 1989/1588) in so far as those regulations applied to local authorities in Wales. That was in consequence of the additional administrative work which local government reorganisation in Wales placed upon Welsh local authorities. The provisions applied to local authorities in Wales by the present Regulations apply (with some modifications) the same provisions that had applied to Welsh local authorities under the 1989 Regulations.

Section 7(1) of the 1980 Act provides that a local authority may not enter into a works contract whose value exceeds the prescribed amount unless they do so as the result of acceptance of a tender. The Regulations prescribe different amounts in relation to different descriptions of contract namely, £25,000 in respect of general highway works; £50,000 in respect of the construction and maintenance of sewers and works of new construction and £10,000 in respect of works of maintenance (regulation 4).

For the purpose of regulation 4 certain works contracts are to be treated as a single contract (regulation 5).

Section 7(1) of the 1980 Act also provides that a local authority may not enter into a works contract whose value is equal to or less than the prescribed amount unless they have complied with conditions to be prescribed by regulations. This is provided for in regulations 6 and 7. They apply in relation to certain general highway works where the value of the jobs does not exceed £25,000; to works of new construction not exceeding £50,000 and works of maintenance not exceeding £10,000.

The Regulations also specify certain descriptions of works contracts to which the restrictions in section 7(1) of the Act do not apply (regulation 8). The descriptions of works contracts are emergency work (defined in regulation 2); gritting of and clearing of snow from highways and certain further contracts.

In relation to functional work, the Regulations specify descriptions of work which an authority may not undertake unless they have first complied with the conditions specified in section 9(4) of the Act (regulation 9) namely all general highway works (except certain jobs not exceeding £25,000); the construction or maintenance of a sewer where the estimated cost of the job exceeds £50,000; works of new construction and works of maintenance.

The Regulations also specify descriptions of functional work which may be undertaken by a local authority without having first to comply with the conditions specified in section 9(4) of the Act (regulation 10). These correspond to the descriptions of works contracts in regulation 8 save that, additionally, work undertaken for the purposes of a Crown Court is exempt.

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The Regulations also lay down conditions with which authorities must comply before carrying out functional work consisting of certain highway jobs not exceeding £25,000 and the gritting of and clearing of snow from highways where that functional work is to be done by their DLO (regulation 11).

Regulation 12 disapplies the 1994 Regulations in relation to works contracts and functional work to which the present Regulations apply.