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STATUTORY INSTRUMENTS

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**2004 No. 609**

**TRANSPORT, ENGLAND**

**The Service Subsidy Agreements (Tendering)  
(England) (Amendment) Regulations 2004**

<i>Made</i>	- - - -	<i>8th March 2004</i>
<i>Laid before Parliament</i>		<i>9th March 2004</i>
<i>Coming into force</i>	- -	<i>1st April 2004</i>

The Secretary of State for Transport, in exercise of the powers conferred by sections 91(1) and 134(5) of the Transport Act 1985(1) hereby makes the following Regulations:

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Service Subsidy Agreements (Tendering) (England) (Amendment) Regulations 2004 and shall come into force on 1st April 2004.

(2) These Regulations apply in England only(2).

**Amendment of the Service Subsidy Agreements (Tendering) (England) Regulations 2002**

2. The Service Subsidy Agreements (Tendering) (England) Regulations 2002(3) are amended as provided in regulations 3 to 5 below.

3. In regulation 2 (interpretation), after the definition of “authority”, insert—

““forecast expenditure” means the amount that an authority expects to spend on service subsidies in a financial year;”

4.—(1) Regulation 3 (exclusions from section 89(1) of the Transport Act 1985) is amended as provided in paragraphs (2) and (3).

(2) For paragraph (1) substitute—

“(1) This regulation applies to service subsidy agreements that are made at a time when an authority’s forecast expenditure for the current financial year does not exceed £600,000.

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(1) 1985 c. 67; see section 137(1) of that Act for the definitions of “prescribed” and “regulations”.

(2) The functions of the Secretary of State under section 91 are, so far as exercisable in relation to Scotland, transferred to the Scottish Ministers by section 53(1) of the Scotland Act 1998 (c. 46) and, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (SI 1999/672), article 2: see the entry in Schedule 1 for the Transport Act 1985 (c. 67).

(3) S.I.2002/2090.

(1A) Subject to paragraphs (2), (3), (4) and (5), where this regulation applies there are excluded from section 89(1) of the Act the following service subsidy agreements—

- (a) any agreement which will remain in force for less than 12 months and under which the aggregate amount of service subsidies does not exceed £29,999, and
- (b) any agreement which will remain in force for 12 months or more and under which

- (i) the aggregate amount of service subsidies payable during the period of 12 months starting on the date that the agreement comes into force does not exceed £29,999, and

- (ii) the aggregate amount of service subsidies payable during any subsequent relevant year (or part of a year) it is in force cannot exceed £29,999,

(where a “relevant year” is a period of 12 months commencing on an anniversary of the date on which the agreement came into force).”

(3) For paragraph (2) substitute—

“(2) This regulation shall not exclude from section 89(1) of the Act any agreement whose effect is to modify an agreement which is within the scope of paragraph (1) so that—

- (a) where the modified agreement will remain in force for less than 12 months after the date on which the modification takes effect, the aggregate amount of the service subsidies payable in the twelve month period ending on the date that the agreement ceases to be in force is increased to £30,000 or more; or

- (b) where the modified agreement will remain in force for 12 months or more after the date on which the modification takes effect—

- (i) the aggregate amount of the service subsidies payable during the period of 12 months after the date on which the modification takes effect is increased to £30,000 or more, and

- (ii) the aggregate amount of service subsidies payable during any subsequent relevant year (or part of a year) it remains in force is increased to £30,000 or more,

(where a “relevant year” is a period of 12 months commencing on an anniversary of the date on which the modification took effect).”

(4) In paragraph (3)—

- (a) for “paragraphs (1) and (2)” substitute “paragraphs (1A) and (2)”, and

- (b) in sub-paragraph (b), for “in any period of 12 months after the first such period” substitute “at any time after the first period of 12 months”.

(5) After paragraph (4), insert—

“(5) This regulation shall not exclude from section 89(1) of the Act any service subsidy agreement that will remain in force for a period exceeding 5 years.”

5. After regulation 3 insert—

**“Exclusions from section 89(1) of the Act: authority’s forecast expenditure greater than £600,000**

**3A.—**(1) This regulation applies to service subsidy agreements that are made at a time when an authority’s forecast expenditure for the current financial year exceeds £600,000.

(2) Subject to paragraphs (4) and (5), where this regulation applies there is excluded from section 89(1) of the Act any agreement (an “excluded agreement”) which satisfies the criteria in paragraph (3) or such of those criteria as may apply.

(3) The criteria are that—

(a) at the time the agreement is made, the aggregate amount of service subsidies payable in the current financial year under—

(i) the excluded agreement, and

(ii) all other service subsidy agreements made by that authority otherwise than by acceptance of a tender invited pursuant to section 89(1) of the Act,

does not exceed one quarter of the authority’s forecast expenditure for that year, and

(b) where the excluded agreement will remain in force after the end of the financial year in which it was made, the aggregate amount of service subsidies payable under it in any subsequent financial year during which it remains in force cannot exceed one quarter of the forecast expenditure current at the time it was made.

(4) For the purposes of this regulation, the aggregate amount of service subsidies payable in any period under a service subsidy agreement shall:

(a) include any specific amount the payment of which is dependent on a contingency; and

(b) exclude any amount payable under the agreement at any time after the end of the financial year in which it was made and which becomes payable—

(i) as a direct consequence of an increase in an index published by the Government of movements in prices or costs; or

(ii) pursuant to any provision of the agreement whereby an increase in the amount of service subsidies payable is not to exceed a figure calculated by reference to such an index.

(5) This regulation shall not exclude from section 89(1) of the Act any service subsidy agreement that will remain in force for a period exceeding 5 years.”

Signed by authority of the Secretary of State for Transport

8th March 2004

*Tony McNulty*  
Parliamentary Under Secretary of State  
Department for Transport

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## EXPLANATORY NOTE

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

These regulations amend the Service Subsidy Agreements (Tendering) (England) Regulations 2002 (“Principal Regulations”) in so far as they exclude from the tendering requirements of section 89(1) of the Transport Act 1985 various agreements that provide for the payment of service subsidies.

Regulation 3 of the Principal Regulations is amended so that it applies to authorities with a forecast expenditure on service subsidies for the current financial year that does not exceed £600,000. An agreement is excluded if it will remain in force for less than 12 months and the service subsidies payable do not exceed £29,999. If an agreement will remain in force for more than 12 months, it is excluded if the service subsidies payable during the first twelve month period it is in force, and each subsequent twelve month period, do not exceed £29,999. The requirement in regulation 3(2) of the Principal Regulations, that an agreement may not be entered into if the effect would be that a person operating the service would receive an aggregate amount of more than £150,000 of service subsidies, under agreements entered into other than by tender, is removed.

Regulation 3A is inserted into the Principal Regulations, and applies to authorities with a forecast expenditure on service subsidies for the current financial year that exceeds £600,000. An agreement is excluded if the service subsidies payable under it in that financial year, as well as service subsidies payable in the same financial year under all other agreements excluded from section 89(1), do not exceed one quarter of the authority’s forecast expenditure on service subsidies. If the agreement will remain in force after the financial year in which it is entered into, it is excluded if the service subsidies payable under the agreement in subsequent financial years do not exceed one quarter of the authority’s forecast expenditure on service subsidies for the year when the agreement was entered into.

In order to be excluded, an agreement must have a term of not more than 5 years. This applies whether the agreement is subject to regulation 3 or 3A of the amended Principal Regulations.