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STATUTORY INSTRUMENTS

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**1993 No. 2810**

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

**PART III**

**PUBLIC SUPPLY OR WORKS CONTRACTS**

**Board contracts: exclusion of non-commercial considerations**

**20.**—(1) Every board shall, in exercising, in relation to its public supply or works contracts, any proposed or any subsisting such contract, as the case may be, any function regulated by this Article, exercise that function without reference to matters which are non-commercial matters for the purposes of this Article.

(2) The contracts which are public supply or works contracts of a board for the purposes of this Article are contracts for the supply of goods or materials to the board, for the supply of services to the board or for the execution of works for the board; but this Article does not apply in relation to contracts entered into before the coming into operation of this Article and does not authorise a board to enter into any contract which it would not be authorised to enter into apart from this Article.

(3) The functions regulated by this Article are—

- (a) the inclusion of persons in or the exclusion of persons from—
  - (i) any list of persons approved for the purposes of public supply or works contracts with the board; or
  - (ii) any list of persons from whom tenders for such contracts may be invited;
- (b) in relation to a proposed public supply or works contract with the board—
  - (i) the inclusion of persons in or the exclusion of persons from the group of persons from whom tenders are invited;
  - (ii) the accepting or not accepting the submission of tenders for the contract;
  - (iii) the selecting of the person with whom to enter into the contract; or
  - (iv) the giving or withholding approval for, or the selecting or nominating, persons to be sub-contractors for the purposes of the contract; and
- (c) in relation to a subsisting public supply or works contract with the board—
  - (i) the giving or withholding approval for, or the selecting or nominating, persons to be sub-contractors for the purposes of the contract; or
  - (ii) the termination of the contract.

(4) The following matters are non-commercial matters as regards the public supply or works contracts of a board, any proposed or any subsisting such contract, as the case may be, that is to say—

- (a) the terms and conditions of employment by contractors of their workers or the composition of, the arrangements for the promotion, transfer or training of or the other opportunities afforded to, their workforces;

- (b) whether the terms on which contractors contract with their sub-contractors constitute, in the case of contracts with individuals, contracts for the provision by them as self-employed persons of their services only;
  - (c) any involvement of the business activities or interests of contractors with irrelevant fields of Government policy;
  - (d) the conduct of contractors or workers in trade disputes between them or any involvement of the business activities of contractors in trade disputes between other persons;
  - (e) the country or territory of origin of supplies to, or the location in any country or territory of the business activities or interests of, contractors;
  - (f) any political, industrial or sectarian affiliations or interests of contractors or their directors, partners or employees;
  - (g) financial support or lack of financial support by contractors for any institution to or from which the board gives or withholds support.
- (5) The matters specified in paragraph (4) include matters which have occurred in the past as well as matters which subsist when the function in question falls to be exercised.
- (6) Where any matter referable to a contractor would, as a matter specified in paragraph (4), be a non-commercial matter in relation to him, the corresponding matter referable to—
- (a) a supplier or customer of the contractor;
  - (b) a sub-contractor of the contractor or his supplier or customer;
  - (c) an associated body of the contractor or his supplier or customer; or
  - (d) a sub-contractor of an associated body of the contractor or his supplier or customer;
- is also, in relation to the contractor, a non-commercial matter for the purposes of this Article.
- (7) This Article is subject to Article 21.