
STATUTORY INSTRUMENTS

1993 No. 2810

The Education and Libraries (Northern Ireland) Order 1993

PART II

COMPETITION

Miscellaneous

Power to define conduct as competitive or anti-competitive

15.—(1) The Department may by regulations make provision, for the purposes of the condition set out in Article 5(5) or 7(6), for conduct described in the regulations to be regarded, in accordance with the regulations and in such circumstances as may be so described—

- (a) as conduct which has the effect of restricting, preventing or distorting competition or is likely to have that effect; or
- (b) as conduct which does not have that effect and is not likely to have that effect.

(2) Without prejudice to the generality of paragraph (1) or to any power conferred by Article 8, regulations under this Article may—

- (a) prescribe the matters which are to be taken into account, or disregarded, in the course of any evaluation made for the purpose of deciding who should undertake or carry out particular work;
- (b) prescribe the manner in which, or extent to which, any matter described in the regulations is to be so taken into account or disregarded;
- (c) prescribe maximum and minimum periods for the periods which are required, by virtue of sub-paragraphs (b) and (d) of paragraph (1) of Article 7, to be specified in a notice published for the purposes of that paragraph;
- (d) prescribe a maximum and a minimum period for the period which is to elapse, in a case where a notice has been so published, between—
 - (i) the announcement of the decision as to who should carry out the work in question; and
 - (ii) the beginning of the period during which the work is to be carried out;
- (e) make provision for the issue by the Department of guidance as to how conduct restricting, distorting or preventing competition is to be avoided in the doing of anything under or for the purposes of this Part; and
- (f) require the extent (if any) to which there has been a contravention of guidance issued by the Department under the regulations to be taken into account in any determination of whether or not a condition mentioned in paragraph (1) has been fulfilled.

Application of this Part to professional services, etc.

16.—(1) The Department may by order subject to affirmative resolution make such provision in relation to proposals for the carrying out of work to which this Article applies as it considers appropriate for facilitating or requiring separate procedures to be followed for—

- (a) the evaluation for the purposes of this Part of the quality of the services which persons willing to carry out the work are able to provide and of their fitness to provide them; and
- (b) the evaluation for those purposes of the financial terms on which such persons would carry out the work.

(2) This Article applies to any work which—

- (a) by virtue of an order under Article 4(2), falls within a defined activity for the purposes of this Part; and
- (b) consists in, or involves, the provision of professional advice or of other professional services or the application of any financial or technical expertise.

(3) Before making an order under this Article the Department shall consult the boards.

(4) Without prejudice to Article 17(3), the power to make an order under this Article shall include power, for the purposes of, or in connection with, any separate procedures for which an order under this Article provides, to modify any provision of this Part.

Regulations, orders, specifications and directions

17.—(1) Regulations under this Part shall be subject to negative resolution.

(2) The power to specify under Article 9, 10 or 11, and the power to give a direction under Article 14, shall be exercised in writing.

(3) Any order or regulations under this Part and any specification or direction mentioned in paragraph (2) may include such supplementary, incidental, consequential or transitional provisions as appear to the Department to be necessary or expedient; and without prejudice to the generality of the foregoing—

- (a) an order under Article 4(2) may include provision amending or adapting any provision of this Part for the purpose of interpreting any sub-paragraph added by the order or for purposes of commencement or otherwise; and
- (b) a direction under Article 14 may include provision with respect to work in progress or outstanding contractual commitments.

Supplementary

18.—(1) No provision of this Part relating to accounts shall prejudice any provision of Article 119 of the 1986 Order.

(2) Nothing in Articles 13 and 14 shall prejudice any remedy available to a person (apart from those Articles) in respect of a failure to observe a provision of this Part.

(3) Nothing in this Part shall be construed as authorising a board to enter into any contract or carry out any work which it would not be authorised to enter into or carry out apart from this Part.