

1990 No.1782 (S.169)

LOCAL GOVERNMENT, SCOTLAND

**The Local Government (Direct Labour Organisations)
(Competition) (Scotland) Regulations 1990**

<i>Made</i> - - - -	<i>28th August 1990</i>
<i>Laid before Parliament</i>	<i>6th September 1990</i>
<i>Coming into force for all purposes except regulation 1(3)</i>	<i>1st October 1990</i>
<i>Coming into force for the purposes of regulation 1(3)</i>	<i>1st April 1991</i>

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

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Local Government (Direct Labour Organisations) (Competition) (Scotland) Regulations 1990.

(2) Subject to paragraph (3), these Regulations shall come into force on 1st October 1990.

(3) Insofar as they apply in relation to development bodies, these Regulations shall come into force on 1st April 1991.

(4) These Regulations shall extend only to Scotland.

Interpretation

2.—(1) In these Regulations—

93 .1“the Act” means the Local Government, Planning and Land Act 1980;

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

“development body” has the same meaning as at (b) and (c) of that definition in section 20(1) of the Act(b);

“DLO revenue account” has the meaning assigned to it by section 10(1) of the Act;

(a) 1980 c.65; section 7(1) and (3) was amended by, and section 7(1A) and (1B) was inserted by, the Local Government Act 1988 (c.9), Schedule 6, paragraph 2; section 9(4) was amended by the Local Government Act 1988, Schedule 6, paragraph 3(2) to (4).

(b) In section 20(1) of the 1980 Act, section 3 of the Water (Scotland) Act 1967 (c.78) should now be read with section 80(1) of the Water (Scotland) Act 1980 (c.45); the power under section 5 of the Water (Scotland) Act 1967 was never exercised and has been replaced by section 82 of the Water (Scotland) Act 1980; the Scottish Special Housing Association has been replaced by Scottish Homes, for which see the Housing (Scotland) Act 1988 (c.43) Schedule 2, paragraph 1.

“emergency work” means work of any description the necessity for which could not reasonably have been foreseen by the local authority or development body 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; and
- (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 authority or development body.

“estimated cost” in relation to a job, means the aggregate of the amounts which a local authority or development body will credit to their DLO revenue account 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, 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;

“functional work” has the meaning given to it in section 8 of the Act;

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

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

“local authority” has the same meaning as at (b) of that definition in section 20(1) of the Act;

“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 contract” has the meaning given to it in section 5 of the Act;

“works of maintenance” means works of maintenance within the meaning of the Local Authorities (Goods and Services) Act 1970(b) not being general highway works or works of maintenance in connection with water and sewerage works; and

“works of new construction” means building or civil engineering works of any description not being general highway works, general water and sewerage works 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 3 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 3 and comprised in the job,

and if the value of the contract or the estimated cost of the job so far as attributable to works of two or more descriptions is the same, that contract or job shall be treated as providing principally for works of each of those descriptions.

(3) In ascertaining for the purposes of paragraph (2) above or of regulation 6 or 8 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 general water and sewerage works.

(4) Any reference in these Regulations—

(a) Section 10(3) was amended by the Local Government Act 1988 (c.9), Schedule 6, paragraph 4.
(b) 1970 c.39.

- (a) to a numbered regulation is a reference to the regulation in these Regulations bearing that number; and
- (b) to a numbered paragraph in a regulation is a reference to the paragraph in that regulation bearing that number.

Prescribed amounts for works contracts

3. For the purposes of section 7(1) of the Act (a) (prescribed amounts for certain works contracts) the following amounts are prescribed for works contracts 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) general water and sewerage works, £50,000;
- (c) works of new construction, £50,000;
- (d) works of maintenance, £10,000.

Treatment of certain works contracts as a single contract

4. For the purposes of determining whether the value of a works contract exceeds the amount prescribed by regulation 3 for a contract of that description, the value of any other contract made within the preceding 6 months for work of 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

5. In relation to a works contract to which this regulation applies, 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 a works contract the value of which is equal to or less than the prescribed amount) 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 (b).

Application of Regulation 5

6.—(1) Regulation 5 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 authority otherwise than in accordance with section 7 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;
- (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 70% 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

7.—(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;
- (c) a contract which satisfies 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, or it is a contract for works of maintenance to be carried out before 1st October 1990; and

(a) Section 7(1) was amended by the Local Government Act 1988, Schedule 6, paragraph 2(2).

(b) Section 7(3) was amended by the Local Government Act 1988, Schedule 6, paragraph 2(4).

- (ii) it is a further contract the value of which does not exceed by more than 10% the value of an earlier 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 further contract does not exceed by more than 10% the value of each corresponding separate item of work (if any) comprised and priced in the earlier contract; and
 - (iii) except in the case of a contract for works of maintenance, the work comprised in the contract is to be carried out on the same site or surface as the work comprised in the earlier contract or on sites or surfaces adjacent to those on which the work comprised in the earlier contract has been or is to be carried out.
- (2) For the purposes of paragraph (1) a contract is an earlier 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 are not, or included at least three other persons who are not, local authorities or development bodies;
 - (b) the local authority submitted the lowest tender following that invitation;
 - (c) the contract 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.

Functional work

8.—(1) Subject to regulation 9, a local authority or development body may not undertake functional work of any of the descriptions mentioned in paragraph (2) below unless they have first complied with the conditions specified in section 9(4) of the Act as well as with the terms of section 9(2).

- (2) Functional work of the descriptions mentioned in this paragraph are the following:—
- (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 water and sewerage works where the estimated cost of the job exceeds £50,000;
 - (c) a job consisting or consisting principally of works of new construction;
 - (d) a job consisting or consisting principally of works of maintenance;
 - (e) 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 authority or body otherwise than in accordance with section 7 or the conditions mentioned in section 9(3)(a) of the Act in the same financial year exceeds the relevant limit.

(3) For the purpose of paragraph (2)(e) the relevant limit is 70% of the aggregate value of all relevant highway work undertaken and all contractual highway work carried out by that authority or body in the immediately preceding financial year.

Exempted functional work

9.—(1) Functional work of any of the descriptions mentioned in paragraph (2) below does not constitute functional work for the purposes of regulation 8(2).

- (2) Functional work of the descriptions mentioned in this paragraph are:—
- (a) emergency work;
 - (b) the gritting of or the clearing of snow from highways;
 - (c) work comprising a job which satisfies 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, or it is a job for works of maintenance to be carried out in the case of a local authority before 1st October 1990, or in the case of a development body, before 1st April 1991; and
 - (ii) it is a further job, the estimated cost of which does not exceed by more than 10% the estimated cost of an earlier job of a similar description undertaken

by the local authority or development body 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 further job does not exceed by more than 10% the estimated cost of each corresponding item of work (if any) comprised and priced in the earlier job; and

(iii) except in the case of a job which is a work of maintenance, the work comprised in the job is to be carried out on the same site or surface as the work comprised in the earlier job or on sites or surfaces adjacent to those on which the work comprised in the earlier job has been or is to be carried out.

(3) For the purposes of paragraph (2) a job is an earlier 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;
- (b) the estimated cost of the job submitted by the local authority or development body 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.

Revocations

10. The Local Government (Direct Labour Organisations) (Competition) (Scotland) Regulations 1984(a) and the Local Government (Direct Labour Organisations) (Competition) (Scotland) Amendment Regulations 1988(b) are hereby revoked(c).

St. Andrew's House, Edinburgh
28th August 1990

James Douglas-Hamilton
Parliamentary Under Secretary of State
Scottish Office

(a) S.I. 1984/159.

(b) S.I. 1988/956.

(c) See regulation 1(2) and (3) for the different dates of coming into force of regulation 10.

EXPLANATORY NOTE

(This note is not part of these Regulations)

These Regulations consolidate with amendments the Local Government (Direct Labour Organisations) (Competition) (Scotland) Regulations 1984 ("the 1984 Regulations") and the Local Government (Direct Labour Organisations) (Competition) (Scotland) Amendment Regulations 1988 ("the 1988 Regulations"), which instruments are revoked by these Regulations. These Regulations come into force on 1st October 1990 insofar as they apply to local authorities and on 1st April 1991 insofar as they apply to development bodies. The revocation of the 1984 Regulations and 1988 Regulations have effect on the same basis.

The main changes made by these Regulations are contained in regulations 2, 3, 6, 7, 8 and 9.

Regulation 2 contains altered definitions of "emergency work" and "general highway works".

Regulation 3 prescribes values for works contracts of different descriptions, which values were previously detailed in the Schedules to the 1984 Regulations. The values themselves have not been altered by these Regulations.

Regulation 6 applies the competitive tendering requirements described in regulation 5 to works contracts for general highway works, works of new construction and works of maintenance where the value of each type of contract is equal to or less than the financial limit specified in regulation 6. The main change is that, for contracts for works of new construction and works of maintenance, the exemption from those requirements based on a percentage of the value of such contracts undertaken in the previous financial year is removed.

Regulation 7 describes circumstances in which a works contract is exempt from the competitive tendering requirements. The main change is that contracts for maintenance work to be undertaken by a local authority on or after 1st October 1990 are now removed from the exemption.

Regulation 8 describes the types of jobs of functional work which a local authority or development body may undertake, provided it has met legislative requirements referred to in regulation 8 (including competitive tendering). The main change is to apply the competitive tendering requirements to all works of new construction and works of maintenance, regardless of value.

Regulation 9 specifies the descriptions of functional work which are exempt from the competitive tendering requirements. The main change is that jobs of maintenance work to be undertaken, by local authorities on or after 1st October 1990, or by development bodies on or after 1st April 1991, are now removed from the exemption.

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