Draft Order laid before Parliament under section 77(2) of the Deregulation and Contracting Out Act 1994, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2004 No. xxx

CONTRACTING OUT, ENGLAND AND WALES

The Local Authorities (Contracting Out of BID Levy Billing, Collection and Enforcement Functions) Order 2004

Made - - - - xxx

Coming into force in accordance with article 1

The First Secretary of State, in exercise of the powers conferred by sections 70(2) and (4) and 77(1) of, and paragraph 3 of Schedule 16 to, the Deregulation and Contracting Out Act 1994(**1**), after consultation with the representatives of local government appearing to him to be appropriate, hereby makes the following Order, a draft of which has been laid before, and approved by a resolution of, each House of Parliament:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Local Authorities (Contracting Out of BID Levy Billing, Collection and Enforcement Functions) Order 2004 and shall come into force on the day after the day on which it is made.

(2) In this Order–

"the 1989 Regulations" means the Non-Domestic Rating (Collection and Enforcement)(Local Lists) Regulations 1989(**2**) as applied with modifications by the Business Improvement Districts (England) Regulations 2004(**3**);

"the 2003 Act" means the Local Government Act 2003(**4**);

"the amount payable" for a chargeable period or part of a chargeable period in relation to a particular person, a relevant billing authority and a hereditament means—

(a) the amount that person is liable to pay to the authority as regards the hereditament in respect of the period or part under section 46 of the 2003 Act by virtue of that person falling within the description of persons liable to BID levy in the BID arrangements; or

(**1**) 1994 c.40. Section 71(3) (functions excluded from sections 69 and 70) was amended by paragraph 59 of Schedule 7 to the Local Government Act 2003 (c.26).
(**2**) S.I. 1989/1058; amendments are made by S.I. 1990/145, 1991/141, 1991/1127, 1992/474, 1992/1512, 1993/774, 1993/894, 1993/1493, 1995/212 and 1998/3089.
(**3**) S.I. 2004/2443.
(**4**) 2003 c.26.

(b) where an amount falls to be credited by the authority against that person's liability in respect of the period or part, the amount (if any) by which the amount referred to in sub-paragraph (a) exceeds the amount falling to be so credited;

"BID" means a business improvement district (which has the meaning given by section 41 of the 2003 Act);

"BID arrangements" has the meaning given by section 41 of the 2003 Act;

"BID levy" has the meaning given by section 41 of the 2003 Act;

"billing authority" has the meaning given by section 59 of the 2003 Act;

"chargeable period" has the meaning given by section 45 of the 2003 Act;

"contractor" means a person to whom an authorisation is given by virtue of this Order, and includes the employees of that person;

"debtor", except in article 20, has the meaning given in regulation 10 of the 1989 Regulations;

"demand notice" has the meaning given in the Business Improvement Districts (England) Regulations 2004;

"hereditament" is anything which is, or is treated as being, a hereditament by virtue of the provisions of or under section 64 of the Local Government Finance Act 1988(**5**); and

"liability order" has the meaning given in regulation 10 of the 1989 Regulations.

PART 1

CONTRACTING OUT

Functions of billing authorities

2. The functions of a billing authority conferred by or under—

(a) Part 4 of the 2003 Act; or

(b) regulations under section 48 of the 2003 Act,

in relation to the imposition, administration, collection, recovery and application of BID levy may, to the extent provided for in this Part and subject to the provisions of Part 2 and article 20, be exercised by such contractor as may be authorised to exercise them by the billing authority whose functions they are.

Notices

3. Where a contractor is authorised under this Part to serve any notice which is required or authorised by the 1989 Regulations to be served on any person, the contractor may also be authorised —

(a) subject to articles 13 and 14, to determine the form and the manner of service of the notice;

(b) to determine any period which is required or authorised by the 1989 Regulations to be specified in the notice; and

(c) where the notice requires the person on whom the notice is served to make a payment, to accept an amount paid in compliance with the notice.

(**5**) 1988 c.41.

Demand notices and payments of BID levy

4.—(1) For the purposes of Part II of the 1989 Regulations (billing), a billing authority may authorise a contractor to identify the persons who are liable for BID levy, and to identify those hereditaments with respect to which there would at a particular time be more than one person who is liable for the BID levy.

(2) A billing authority may authorise a contractor to prepare and serve demand notices and any further notice which is to be treated under the 1989 Regulations as if it were a demand notice and, where appropriate for those purposes, to exercise the functions—

(a) of determining whether any person falls within the description of person liable for BID levy (as set out in the BID arrangements) with respect to any hereditament;

(b) where a person is liable for BID levy of the authority as regards more than one hereditament, of serving a single demand notice in relation to the amounts payable with respect to all, or any two or more, of those hereditaments;

(c) of estimating or calculating the amount payable in relation to a hereditament by way of BID levy for a chargeable period or part of a chargeable period;

(d) subject to article 15, of reaching agreement with a person who is liable for BID levy as to the manner of payment of an estimate of the amount payable and as to provision for the cessation or adjustment of payments and the making of fresh estimates;

(e) where persons are jointly and severally liable to pay the BID levy as partners or trustees, of giving a notice which falls to be given under Part II of the 1989 Regulations severally to each or any of the owners or occupiers concerned, or jointly to the partnership or trust;

(f) where a notice which falls to be given under Part II of the 1989 Regulations is given to more than one person in respect of the same amount, of notifying that fact to each such person; and

(g) where under Part II of the 1989 Regulations there falls to be repaid an amount paid under a notice given to any persons jointly and severally liable as partners or trustees, of repaying the amount in question to any one or more of those persons.

Adjustment of amounts

5. A billing authority may authorise a contractor to exercise the functions—

(a) of determining whether on any day ("the relevant day") after the service of a demand notice the person on whom it was served has ceased to be liable for BID levy;

(b) of calculating the amount payable for the period in the chargeable period up to the relevant day, and preparing and serving on the person who is liable for BID levy a notice stating that amount;

(c) of revising an estimate in a demand notice of the amount payable on the ground that any factor or assumption by reference to which the estimate was calculated is shown to be false;

(d) of preparing and serving on the person who is liable for BID levy a notice stating the amount of that revised estimate and, after deducting amounts (if any) already paid under the original demand notice, the remaining amount due; and

(e) of repaying the amount by which the amounts already paid exceed the revised estimate, or crediting the amount against any subsequent liability of the person for BID levy.

Demand notices: final adjustments

6. A billing authority may authorise a contractor to exercise the functions—

(a) after the expiry of a chargeable period or part of a chargeable period for which an amount is payable in relation to a hereditament by way of BID levy, of preparing and serving a further notice on the person who is liable for the BID levy stating the amount payable for the period or part in relation to the hereditament and adjusting the amounts required to be paid; and

(b) where there has been an overpayment in respect of the person's liability under Part II of the 1989 Regulations, of repaying the amount overpaid or crediting it against any subsequent liability of the person for BID levy.

Executors and administrators – BID levy

7. A billing authority may authorise a contractor to exercise the functions of—

(a) receiving an amount which the executor or administrator of a deceased person (who was, or is alleged to have been, liable for BID levy) is liable to pay;

(b) giving to an executor or administrator a notice requiring the payment of such an amount;

(c) paying to an executor or administrator an amount paid by the deceased person in excess of his liability for BID levy or any costs incurred in the enforcement of his liability for BID levy; and

(d) taking steps for the recovery of any amount from an executor or administrator.

Liability orders

8. A billing authority may authorise a contractor to exercise the functions—

(a) of preparing and serving on any person against whom an application is to be made for a liability order, a reminder notice stating the amount in respect of which the application is to be made;

(b) where persons who are jointly and severally liable for BID levy are liable as partners or trustees, of giving a reminder notice severally to each or any of the owners or occupiers concerned, or jointly to the partnership or trust;

(c) where a reminder notice is given to more than one person in respect of the same amount, of notifying that fact to each of them;

(d) subject to article 16, of applying to the magistrates' court for a liability order against a person or, where two or more persons are jointly and severally liable as partners or trustees, against any one or more of those persons; and

(e) where the amount payable is paid after a liability order has been applied for but before it is made, of requesting the court to make the order in respect of the costs reasonably incurred in making the application.

Distress

9. Subject to article 17, a billing authority may authorise a contractor to exercise the functions—

(a) of taking steps to levy by distress and sale of the debtor's goods the aggregate of—

(i) any outstanding amount which is or forms part of the amount in respect of which a liability order has been made; and

(ii) an amount determined in accordance with Schedule 3 to the 1989 Regulations (charges connected with distress) in respect of charges connected with the distress;

(b) where a liability order has been made against two or more persons jointly, of levying distress against any one or more of those persons; and