STATUTORY INSTRUMENTS

1992 No. 810 (N.I. 6)

The Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1992

- - - - - - *16th March 1992*

Modifications etc. (not altering text)

C1 Order: transfer of functions (8.5.2016) by The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76), art. 1(2), **Sch. 5 Pt. 1** (with art. 9(2))

PART I

INTRODUCTORY

Title and commencement

1.—(1) This Order may be cited as the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1992.

(2) This Order shall come into operation on the expiration of 2 months from the day on which it is made.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954[F1] shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

"the Department" means the Department of the Environment;

"the principal Act" means the Local Government Act (Northern Ireland) 1972[F2] .

(3) Expressions used in this Order and in the principal Act have the same meaning in this Order as in that Act.

F1 1954 c. 33 (NI)
F2 1972 c. 9 (NI)

Part II (arts. 3#17) rep. by 2002 c. 4 (NI)

PART III

PUBLIC SUPPLY OR WORKS CONTRACTS

Interpretation

18. In this Part—

"approved list" means such a list as is mentioned in Article 19(3)(a);

"associated body", in relation to a contractor, means any company which[F3]. . . is the contractor's holding company or subsidiary or is a subsidiary of the contractor's holding company;

"business" includes any trade or profession;

"business activities" and "business interests", in relation to a contractor or other person, mean respectively any activities comprised in, or any investments employed in or attributable to, the carrying on of his business and "activity" includes receiving the benefit of the performance of any contract;

"contractor", except in relation to a subsisting contract, means a "potential contractor", that is to say—

(a) in relation to functions as respects an approved list, any person who is or seeks to be included in the list; and

(b) in relation to functions as respects a proposed public supply or works contract, any person who is or seeks to be included in the group of persons from whom tenders are invited or who seeks to submit a tender for or enter into the proposed contract, as the case may be;

"employers' association" has the same meaning as in the Industrial Relations (Northern Ireland) Order**[**[F4] 1992**]**;

"exclusion" includes removal;

"Government policy" falls within "irrelevant fields" for the purposes of Article 19 if it concerns matters of defence or foreign or Commonwealth policy and "involve", as regards business activities and any such field of policy, includes the supply of goods or materials or services to, or the execution of works for, any authority or person having functions or carrying on business in that field and, as regards business interests and any such field of policy, includes investment in any authority or person whose business activities are so involved;

[[F5]"holding company" and "subsidiary" have the same meaning as in the Companies Acts (see section 1159 of the Companies Act 2006);**]**

"industrial dispute" has the same meaning as trade dispute in the**[**[F4] Article 127 of the Trade Union and Labour Relations (Northern Ireland) Order 1995**]** and "involve", as regards business activities and an industrial dispute, includes the supply of goods, materials or services to or by, or the execution of works for or by, any party to the dispute, any other person affected by the dispute, or any authority concerned with the enforcement of law and order in relation to the dispute;

"political, industrial or sectarian affiliations or interests" means actual or potential membership of, or actual or potential support for, respectively, any political party, any employers' association or trade union or any society, fraternity or other association;

"suppliers or customers" and "sub-contractors" includes prospective suppliers or customers and sub-contractors; and "supplier", in relation to a contractor, includes any person who, in the course of business, supplies him with services or facilities of any description for the purposes of his business;

"trade union" has the same meaning as in the Industrial Relations (Northern Ireland) Order**[**F4 1992**]**.

F3 Art. 18: words in the definition of "associated body" omitted (1.10.2009) by virtue of Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 2(1), **Sch. 1 para. 137(a)** (with art. 10)
F4 1996 NI 16
F5 Art. 18: definitions of "holding company" and "subsidiary" inserted (1.10.2009) by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 2(1), **Sch. 1 para. 137(b)** (with art. 10)

District council contracts: exclusion of non-commercial considerations

19.—(1) Subject to Articles 20**[**F6, 20A**]** and 21(1), every council 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 for the purposes of this Article are contracts for the supply of goods or materials, for the supply of services or for the execution of works; but this Article does not apply in relation to contracts entered into before the coming into operation of 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 council, 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 council—

(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 council—

(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 council, 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 industrial disputes between them or any involvement of the business activities of contractors in industrial 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 council 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.

[F7(7) The Department may by order provide, in relation to councils, for a specified matter to cease to be a non-commercial matter for the purposes of this Article.

(8) An order under paragraph (7) may—

(a) provide for a matter to cease to be a non-commercial matter for specified purposes or to a specified extent;

(b) apply in relation to specified councils, functions or contracts;

(c) amend a statutory provision;

(d) include supplementary, incidental, consequential and transitional provisions.

(9) No order shall be made under paragraph (7) unless a draft of the order has been laid before, and approved by resolution of, the Assembly.**]**

F6 1997 NI 6

F7 Art. 19(7)-(9) added (1.2.2015) by Local Government Act (Northern Ireland) 2014 (c. 8), **ss. 115**, 129 (with s. 124(4)); S.R. 2015/28, art. 2(b)

Modifications etc. (not altering text)

C2 Art. 19(4)(a) modified (4.7.2012) by Local Government Best Value (Exclusion of Non-commercial Considerations) Order (Northern Ireland) 2012 (S.R. 2012/271), arts. 1, **2**

C3 Art. 19(4)(a) modified (30.6.2015) by The Local Government (Exclusion of Non-commercial Considerations) Order (Northern Ireland) 2015 (S.R. 2015/289), arts. 1(1), **2**

C4 Art. 19(4)(d) modified (4.7.2012) by Local Government Best Value (Exclusion of Non-commercial Considerations) Order (Northern Ireland) 2012 (S.R. 2012/271), arts. 1, **2**

C5 Art. 19(4)(d) modified (30.6.2015) by The Local Government (Exclusion of Non-commercial Considerations) Order (Northern Ireland) 2015 (S.R. 2015/289), arts. 1(1), **2**

Fair employment matters

20.—(1) A council which takes any action to comply with**[**F8 Article 64 of the Fair Employment and Treatment (Northern Ireland) Order 1998**]** (restriction on execution of works, etc., by unqualified persons) does not exercise any function regulated by Article 19 by reference to a non-commercial matter.

(2) Subject to paragraph (3), nothing in Article 19 shall preclude a council from—

(a) asking questions or seeking undertakings of any person relating to whether any person is or is not an unqualified person for the purposes of**[**F8 Article 64 of that Order of 1998**]** and considering the responses to them, or

(b) including in a draft contract or draft tender for a contract terms or provisions requiring that the person or persons who are to carry out work under the draft contract or draft tender are to be considered not to be unqualified for the purposes of that**[**F8 Article 64**]** and considering the responses to them,

if, as the case may be, consideration of the information, the giving of the undertaking or the inclusion of the terms or provision is reasonably necessary to secure compliance with that**[**F8 Article 64**]**.

(3) Paragraph (2) does not apply to the function of terminating a subsisting contract and, in relation to functions as respects approved lists or proposed contracts, does not authorise questions in other than written form.

(4) Where it is permissible under paragraph (2) to ask a question it is also permissible to make, if it is in writing, a request for—

(a) evidence in support of an answer to the question; or

(b) information as to whether any person is or is not unqualified for the purpose of**[**F8 Article 64 of that Order of 1998**]**.

(5) In this Article "unqualified" has the same meaning as in**[**F8 Articles 62 and 63 of the Fair Employment and Treatment (Northern Ireland) Order 1998**]**.

F8 1998 NI 21

[F9Race relations matters

20A.—(1) Except to the extent permitted by paragraph (2) Article 67 of the Race Relations (Northern Ireland) Order 1997 (councils to have regard to need to eliminate unlawful racial discrimination and promote equality of opportunity, and good relations, between persons of different racial groups) shall not require or authorise a council to exercise any function regulated by Article 19 by reference to a non-commercial matter.

(2) Subject to paragraph (3), nothing in Article 19 shall preclude a council from—

(a) asking approved questions seeking information or undertakings relating to workforce matters and considering the responses to them, or

(b) including in a draft contract or draft tender for a contract terms or provisions relating to workforce matters and considering the responses to them,

if, as the case may be, consideration of the information, the giving of the undertaking or the inclusion of the term is reasonably necessary to secure compliance with Article 67 of the 1997 Order.

(3) Paragraph (2) does not apply to the function of terminating a subsisting contract and, in relation to functions as respects approved lists or proposed contracts, does not authorise questions in other than written form.