

LOCAL GOVERNMENT AND HOUSING COMMITTEE

PROPOSED ORDER ALLOWING LOCAL AUTHORITIES TO TAKE ACCOUNT OF NON-COMMERCIAL MATTERS WHEN CONSIDERING CONTRACTS

Purpose

1. The Committee is asked to consider the Minister's paper, which sets out her intention to put in place an order which will allow local authorities to legitimately take into account matters currently defined as "non-commercial" (under legislation contained in Part II of the Local Government Act 1988) when considering tenders and awarding contracts.

Summary

2. The paper provides a short background on the current legislation that defines "non-commercial" matters.

3. It sets out the key principles the Minister wishes to address by amendment to this legislation, and provides an indication of the effects of the amendment in so far as it impacts on local authority contracting.

4. Much of the detail around this order will be picked-up in consultation, and the Committee is invited to note that consultation on both the Order and its associated guidance will begin prior to the Easter Recess. The Committee will receive a copy of the consultation paper when it is completed, and the responses to consultation will be presented, if the Committee wishes, at a later Committee meeting.

Timing

5. The Department of Environment, Transport and the Regions has recently (March 13) put in place an order to amend Part II which applies to Local Authorities in England (and to Police and Fire Authorities in Wales). The Minister is keen to put in place a similar order in Wales as soon as possible.

6. The consultation on the order and the guidance that will accompany it will explore the capacity in Wales to enhance its scope to reflect fully the Assembly's priorities in Wales.

7. The Minister hopes to consult on this prior to the Easter recess, and will discuss the results

of that consultation at future Committee meetings.

Background

8. Part II of the Local Government Act 1988 (Section 17(5)) sets out 8 matters which are designated as "non-commercial" for the purposes of public supply or works contracts of a public authority. These are attached at **Annex 1**. All of those matters cannot currently be taken into account when considering tenders and awarding contracts. They were originally put in place to stop local authorities from introducing political or other irrelevant considerations into the contractual process.

9. The Order will remove at least two of those categories {17(5)(a) and 17(5)(d)}, and allow local authorities to take these matters (legitimate workforce matters, such as pension provision, training and development, and the conduct of contractors or their workers in industrial disputes) into account in their tender evaluations and awarding of contracts.

10. It is important to note that such an amendment would impact upon local authorities in circumstances where compliance with best value, TUPE, good procurement practice, and with European Commission Procurement Rules is necessary as part of their contracting processes. The Order will have a wide-ranging effect.

11. The order will provide local authorities in Wales with at least the same abilities as England, but will also, during the consultation on the draft order and guidance, explore if there is scope to include detailed guidance on the National Assembly's aspirations in the areas such as equal opportunities and sustainable development.

12. The intention of the order and guidance will be to enhance good procurement, and will acknowledge that a well-motivated and trained workforce is vital to the provision of good quality local services. In that sense it is part of the Government's wider Fair Employment Agenda.

Compliance

13. The National Assembly has specific powers under Section 19 of the Local Government Act 1999 to make this order, and specify matters that will cease to be "non-commercial" for the purposes of the 1988 Act.

14. The Assembly's powers under the Act were delegated to the First Secretary, and subsequently to the Minister for Local Government and officials. The delegation motions were passed by the Assembly on 23 September 1999, after debate in Plenary Session.

15. There are no issues of regularity and propriety.

16. There are no compliance costs authorities will face in meeting their obligations under this order. More generally costs associated with administering best value will be more than offset by the efficiency savings that best value will deliver to authorities. Finance Group has been consulted about this report, and is content with the financial aspects.

17. There are no novel or contentious proposals contained in the papers.

Cross-cutting Themes

18. The draft order and guidance will be the subject of a wide-ranging consultation process, involving as equal partners local authorities, the voluntary sector and the business sector.

19. The draft guidance to be issued for consultation will give prominence to the issues of sustainable development and equal opportunities, and will canvas views on how best these important issues can be made part of the statutory guidance in these important areas.

Action

20. The Committee is invited to consider the report, and note the intention to put in place as soon as possible an order and accompanying statutory guidance, on which the National Assembly will begin consultation prior to the Easter Recess

21. This will be debated in more detail by the Committee once responses to the consultation paper have been received.

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