EXPLANATORY MEMORANDUM

Title and Number

The Education and Libraries (Exclusion of Non-commercial Considerations) Order (Northern Ireland) 2004. Number 217 in the 2004 series of Statutory Rules of Northern Ireland.

Laying Authority

Laid before Parliament by Command of Her Majesty .

Department responsible

The Order is made under the powers conferred on the Department of Education (Northern Ireland) by Article 14 (1) and (2) of the Education and Libraries (Northern Ireland) Order 2003. The Order is laid at Westminster subject to the negative resolution procedure by virtue of paragraph 7(3) of the Schedule to the Northern Ireland Act 2000 .

Description

Article 20 of the Education and Libraries (Northern Ireland) Order 1993 prohibits Education and Library Boards (responsible for the Controlled Schools Sector) from taking account of certain "non-commercial" matters when awarding supply or works contracts. The Department wishes to use the enabling power contained in Article 14 of the Education and Libraries (Northern Ireland) Order 2003 to amend Article 20 of the Education and Libraries (Northern Ireland) Order 1993. The amendment will allow Education and Library Boards to utilise the Public Private Partnerships (PPP) procurement route on an equal basis as those schools in the Grant Maintained Schools Sector.

Legislative Background

The Department of Education (Northern Ireland) has been approached by one of its Non-Departmental Public Bodies (the South-Eastern Education and Library Board) regarding a piece of legislation requiring amendment to allow Education and Library Boards to proceed with school infrastructure projects through the PPP procurement route.

Article 20 (4) of the Education and Libraries (Northern Ireland) Order 1993 contains a list of non-commercial matters by reference to which Education and Library Boards may not exercise the functions listed in Article 20 (3) of that order, which includes functions in relation to proposed public supply or works contracts with Boards. One of the issues dealt with is the terms and conditions of employment of a contractor's workforce and the

conduct of contractors or their workers in industrial disputes. This needs to be amended to allow Boards to consider terms and conditions of employment when assessing tenders and is in line with Treasury guidance and best practice. At present Education and Library Boards cannot comply with ODPM Guidance on Two-Tier Workforce as a basis for assessing bids.

Equality Issues

The Education and Libraries Order does not apply to the grant maintained sector. It can therefore take account of non-commercial issues. This leads to inequality of treatment between the two sectors. The Education and Libraries Order 2003 attempts to address the problem under Article 14 whereby "The Department may by order provide, in relation to Boards, for a specified matter to cease to be a non-commercial matter for the purposes of Article 20 of the Education and Libraries (Northern Ireland) Order 1993". The Department proposes therefore to exercise its right under the 2003 Order to remove the existing anomaly and ensure that Education and Library Boards and the Trustees/Boards of Governors of maintained schools can utilise the Public Private Partnerships procurement route on a fair and equitable basis.

There is no equality implication in relation to the European Court of Human Rights contained in the Order.

Impact Assessment

A full impact assessment has not been produced, as the Order will have no impact on the cost for business, the public or the Exchequer. The Order will have no impact on Voluntary Organisations or Charities. The Order is unlikely to garner any public interest.

Extent

The legislation applies to Northern Ireland only. A similar amendment has already been inserted in the equivalent GB legislation.

Contact Details

Department of Education (Northern Ireland)

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