

# Public Services (Ownership and User Involvement) Bill

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Schedule – Contracts with relevant authorities and the promotion of organisations with a social purpose

Part 1 – Prioritising social enterprises, not for profit entities and public sector bodies

Part 2 – Contracts with relevant authorities

Part 3 – Amendment of Local Government Act 1988

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**B I L L**

TO

Promote public ownership of public services; to introduce a presumption in favour of service provision by public sector and not-for-profit entities; and to put in place mechanisms to increase the accountability, transparency and public control of public services, including those operated by private companies.

**B**E IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

**1 Obligation to consult prior to outsourcing or privatisation**

- (1) If a relevant authority proposes to enter into a public services contract in circumstances where those services were previously provided or secured by that authority, or where it has an obligation to provide such services, it must consult on the proposed contract in accordance with subsections (2), (3) and (4). 5
- (2) Before starting the process of procurement for a public services contract, the relevant authority must publicise its intention to enter into the proposed contract in such a manner as the authority reasonably thinks it will bring the proposal to the attention of the majority of people who would be affected by it.
- (3) Any consultation held under subsection (1) must be open for response for at least 28 days and must, in particular, allow consultees to express a view as to whether they wish the services to be provided by the relevant authority. 10
- (4) Where the proposed contract relates to an asset held by the relevant authority, any consultation held under subsection (1) must allow consultees to express a view as to whether they wish the asset to remain the property of the relevant authority. 15
- (5) The relevant authority must, when deciding whether to proceed with the process of procuring a public services contract, have regard to any responses to the consultation that the authority has received.

## 2 Internal bids

- (1) Where a relevant authority has held a consultation and decides to proceed with the process of procurement for a public services contract, it must consider any internal bid.
- (2) Where the relevant authority determines that an internal bid is not practicable, it is required to give reasons for this decision and publicise those reasons in such a manner as the authority reasonably thinks it likely to bring them to the attention of the majority of people who would be affected by the outcome of the procurement exercise. 5

## 3 Contracts with relevant authorities and the promotion of organisations with a social purpose 10

- (1) The Schedule has effect.
- (2) In that Schedule—
  - (a) Part 1 requires the Secretary of State to make regulations prioritising bids by public authorities, not for profit entities and social enterprises and also makes consequential provisions; 15
  - (b) Part 2 provides that where a relevant authority is engaged in the purchase, management, disposal and hire of goods or the carrying out of works, it is required to consider how what is proposed to be procured might improve the economic, social and environmental well-being of the relevant area, and how, in conducting the process of procurement, it might act with a view to securing that improvement; 20
  - (c) Part 3 amends provisions of the Local Government Act 1988 relating to the exclusion of non-commercial considerations in the case of local and other public authority contracts. 25

## 4 Requirement for a break clause

- (1) Where a relevant authority enters into a public services contract it must include in that contract a break clause.
- (2) A relevant authority is entitled to exercise the break clause under a public services contract and re-tender for the contract where the relevant conditions are triggered. 30
- (3) The Secretary of State may by regulations define the trigger conditions to be included in a break clause under subsection (1).
- (4) In respect of a nationally provided public service, such regulations may in particular require contracts for public services to— 35
  - (a) require the relevant authority to provide a complaints procedure and record the number of complaints received about the service provision;
  - (b) prescribe a defined threshold of complaints after which the relevant authority is obliged to consider whether an adequate service is being provided under the contract; 40
  - (c) prescribe that in circumstances where the threshold of complaints is reached, and the relevant authority concludes that an adequate service is not being provided under the contract, it is entitled to exercise the break clause and re-tender for the contract.

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- (5) In respect of a local or regionally provided public service, such regulations may in particular require a contract for public services to –
- (a) require the relevant authority to provide a complaints procedure and record the number of complaints received about the service provision; 5
  - (b) prescribe a defined threshold of complaints after which the relevant authority is required to consider whether an adequate service is being provided under the contract. 5
  - (c) prescribe that in circumstances where the threshold of complaints is reached, and the relevant authority concludes that an adequate service is not being provided under the contract, it is entitled to exercise the break clause and re-tender for the contract. 10
- (6) When a break clause is exercised under section 4, regulations must preclude the payment of any financial compensation under the contract.
- 5 Transparency** 15
- (1) Where a relevant authority starts the process of procurement for a public services contract, it must make available to the public details of all bids received prior to the conclusion of the procurement exercise. 15
  - (2) Where a relevant authority enters into a public services contract, details of that contract shall be made available to the public within 28 days of the procurement decision. 20
- 6 Freedom of information**
- (1) The Secretary of State must designate as a public authority, pursuant to section 5(1)(b) of the Freedom of Information Act 2000, companies or other bodies which enter into a public services contract.
  - (2) “Public services contract” has the meaning contained within section 8 of this Act. 25
  - (3) The Secretary of State shall maintain a list of companies designated under section 6(1) of this Act.
  - (4) Requests under the Freedom of Information Act 2000 in respect of such companies or bodies can only be made in respect of information relevant to the provision of a public services contract. 30
  - (5) The Secretary of State must designate as a public authority, pursuant to section 5(1)(b) of the Freedom of Information Act 2000, any utility company subject to regulation by regulatory authorities as defined in section 8.
- 7 Orders and regulations** 35
- (1) Any power to make regulations under this Act is exercisable by statutory instrument.
  - (2) A statutory instrument containing regulations under this Act is subject to annulment in pursuance of a resolution of either House of Parliament, save as specified in subsection (3). 40
  - (3) A statutory instrument containing regulations under section 3 may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

## 8 Interpretation

In this Act—

- “asset” means an asset worth in excess of £50,000;
- “internal bid” means an in-house bid by public sector staff employed by the relevant authority; 5
- “public service contract” means all contracts for public services, whether national or local, worth in excess of £50,000;
- “regulatory authorities” includes Ofwat and Ofgem;
- “relevant authority” means a person or body that is a contracting authority for the purposes of the Regulations; 10
- “the Regulations”, in the definition of “relevant authority”, means the Public Contracts Regulations 2006 (S.I. 2006/5), or any regulations replacing those regulations, as from time to time amended.

## 9 Financial provisions

*There is to be paid out of money provided by Parliament—* 15

- (a) *any expenditure incurred under or by virtue of this Act by the Secretary of State, a Minister of the Crown, a person holding office under Her Majesty or by a government department, and*
- (b) *any increase attributable to this Act in the sums payable under any other Act out of money so provided.* 20

## 10 Short title, commencement and extent

- (1) This Act may be cited as the Public Services (Ownership and User Involvement) Act 2014.
- (2) This Act comes into force at the end of the period of 2 months beginning with the day on which it is passed. 25
- (3) This Act extends to England, Wales, Scotland and Northern Ireland.

## SCHEDULE

Section 3

### CONTRACTS WITH RELEVANT AUTHORITIES AND THE PROMOTION OF ORGANISATIONS WITH A SOCIAL PURPOSE

#### PART 1

#### PRORITISING SOCIAL ENTERPRISES, NOT FOR PROFIT ENTITIES AND PUBLIC SECTOR BODIES 5

- 1 The Secretary of State shall make regulations, providing that where a relevant authority contracts for a public services contract, it may reserve the right to prefer a bid by a public sector body, a not for profit entity or a social enterprise.
- 2 Such regulations may consider the circumstances in which the right to prefer in paragraph 1 may be exercised, including consideration of a public benefit. 10
- 3 Any regulations made under paragraph 1 of this Schedule may require the Secretary of State to compile a list of bodies that would qualify as a not for profit entity or a social enterprise for the purpose of this Act.
- 4 The bodies referred to in paragraph 3 shall include, but are not limited to— 15
  - (a) charities;
  - (b) industrial and provident societies;
  - (c) community interest companies;
  - (d) mutuals wholly owned by staff.

#### PART 2 20

#### CONTRACTS WITH RELEVANT AUTHORITIES

- 5 Where a relevant authority is engaged in the purchase, management, disposal and hire of goods or the carrying out of works the authority must consider— 25
  - (a) how what is proposed to be done might improve the economic, social and environmental well-being of the relevant area, and
  - (b) how, in conducting the process of purchasing, managing, disposing, hiring or carrying out works, it might act with a view to securing that improvement.
- 6 The authority must consider under paragraph 5(b) only matters that are relevant to the activities proposed under that paragraph and in doing so, must consider the extent to which it is proportionate in all the circumstances to take those matters into account. 30
- 7 The authority must consider whether to undertake any consultation as to the matters that fall to be considered under paragraph 5. 35
- 8 If an urgent need to arrange the activities proposed under paragraph 5 makes it impractical to comply with the requirements in paragraphs 5, 6 and

- 7, a relevant authority may disregard the requirements to the extent that it is not practical to comply with them.
- 9 Paragraph 8 does not apply to the extent that the time available is reduced by undue delay on the part of the authority after this section has come into force. 5
- 10 The “relevant area” for the purpose of paragraph 5(a) means the area consisting of the area or areas of the one or more relevant authorities on whose behalf the activities are intended to be conducted.
- PART 3
- AMENDMENT OF LOCAL GOVERNMENT ACT 1988 10
- 11 In section 17 of the Local Government Act 1988 (exclusion of non-commercial considerations in the case of local and other public authority contracts), after subsection (11) insert –
- “(12) This section does not prevent a public authority to which it applies from exercising any function regulated by this section with reference to a non-commercial matter to the extent that the authority considers it necessary or expedient to do so to enable or facilitate compliance with a duty imposed on it by the Public Services (Ownership and User Involvement) Act 2014.” 15

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To promote public ownership of public services; to introduce a presumption in favour of service provision by public sector and not-for-profit entities; and to put in place mechanisms to increase the accountability, transparency and public control of public services, including those operated by private companies.

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supported by  
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