
STATUTORY INSTRUMENTS

1996 No. 2935 (S.224)

LOCAL GOVERNMENT, SCOTLAND

**The Local Government, Planning and Land Act
1980 (Competition) (Scotland) Regulations 1996**

<i>Made</i>	- - - -	<i>20th November 1996</i>
		<i>22nd November</i>
<i>Laid before Parliament</i>		<i>1996</i>
<i>Coming into force</i>	- -	<i>1st July 1997</i>

The Secretary of State, in exercise of the powers conferred on him by sections 7(1), (2), (4)(a) and (b), (5) and (6), 9(3) and (4) and 23(1) of the Local Government, Planning and Land Act 1980⁽¹⁾ (and all other powers enabling him in that behalf, hereby makes the following Regulations:

Citation, commencement and application

1.—(1) These Regulations may be cited as the Local Government, Planning and Land Act 1980 (Competition) (Scotland) Regulations 1996 and shall come into force on 1st July 1997.

(2) These Regulations shall apply to local authorities in Scotland.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Local Government, Planning and Land Act 1980;

“contractual highway work” means general highway works carried out by a local authority by that authority’s placing of a contract with another person for the doing of the work by that other person (either directly or, in whole or in part, through subcontractors) which contract provides, or provides principally, for the carrying out of general highway works, the value of which does not exceed £25,000;

“DLO revenue account” has the meaning given to it by section 10(1) of the Act;

“emergency work” means work of any description the necessity for which could not reasonably have been foreseen by the local authority concerned and which is—

(1) 1980 c. 65; section 7(1) was amended by the Local Government Act 1988 (c. 9), Schedule 6, paragraph 2; section 9(4) was amended by the Local Government Act 1988, Schedule 6, paragraph 3(2) to (4) and the Local Government Act 1992 (c. 19), Schedule 1, paragraph 2(2); and section 23(1) was amended by the Local Government Act 1992, Schedule 1, paragraph 9.

- (a) required to avert, alleviate or eradicate in their area, or any part of it, the effects or potential effects of any emergency or disaster which involves or is likely to involve risk of serious damage to or destruction of property or risk of injury or danger to health or life; and
- (b) required to be put in hand as a matter of urgency within 48 hours of the emergency or disaster occurring; and
- (c) not work on a scale or of a nature normally undertaken by that authority;

“estimated cost”, in relation to a job, means the aggregate of the amounts which a local authority will credit to their DLO revenue account in respect of the carrying out of all the items of construction or maintenance work comprised in that job—

- (a) so far as such amounts will fall to be determined in accordance with a written statement prepared in compliance with section 9(2)(a) of the Act(2), as so determined; and
- (b) so far as such amounts will fall to be determined in accordance with a method specified in a written statement prepared in accordance with section 9(2)(b) of the Act, as estimated in accordance with that method;

“functional work” has the meaning given to it in section 8 of the Act(3);

“general highway works” has the meaning given to it in section 10(3) of the Act(4);

“job” means all the functional work which can reasonably be carried out most economically and efficiently under one arrangement;

“local authority” has the same meaning as in paragraph (b) of the definition of that phrase in section 20(1) of the Act(5);

“relevant highway work” means general highway works comprised in a works contract which provides, or provides principally for, or in a job which consists, or consists principally of, general highway works, and for which the value of the contract or the estimated cost of the job does not exceed £25,000;

“trunk road work let in competition” means general highway works—

- (a) carried out by a local authority pursuant to an agreement entered into under section 4 of the Roads (Scotland) Act 1984(6) (agreements between authorities); and
- (b) carried out following the acceptance by or on behalf of the Secretary of State of a competitive tender;

“works contract” has the meaning given to it in section 5 of the Act;

“works of maintenance” means works of maintenance within the meaning of the Local Authorities (Goods and Services) Act 1970(7), not being general highway works or works of maintenance in connection with water and sewerage works; and

“works of new construction” means building or civil engineering works of any description, not being general highway works, general water and sewerage works or works of maintenance.

(2) In ascertaining for the purposes of these Regulations the description of work for which a contract principally provides, or of which a job principally consists, regard shall be had only to—

(2) Section 9(2) was amended by the Local Government Act 1992, Schedule 1, paragraph 2(1).
(3) Section 8(1)(b) was amended by the Local Government etc. (Scotland) Act 1994 (c. 39), Schedule 13, paragraph 120(3) and Schedule 14.
(4) Section 10(3) was amended by the Local Government Act 1988, Schedule 6, paragraph 4.
(5) The definition of “local authority” in relation to Scotland was amended by the Local Government etc. (Scotland) Act 1994, Schedule 13, paragraph 120(4).
(6) 1984 c. 54.
(7) 1970 c. 39.

- (a) the value of the contract so far as it is attributable to works of each description mentioned in paragraphs (a) to (d) of regulation 3 below and comprised in the contract; or
- (b) the estimated cost of the job so far as it is attributable to works of each description mentioned in paragraphs (a) to (d) of regulation 3 below and comprised in the job,

and if the value of the contract or the estimated cost of the job so far as attributable to works of two or more descriptions is the same, that contract or job shall be treated as providing principally for works of each of those descriptions.

Prescribed amounts for works contracts

3. Subject to regulation 6 below, for the purposes of section 7(1) of the Act (prescribed amounts for certain works contracts) the following amounts are prescribed for works contracts of the following descriptions, namely for a contract which provides, or provides principally, for the carrying out of—

- (a) general highway works, £25,000;
- (b) general water and sewerage works, £50,000;
- (c) works of new construction, £50,000;
- (d) works of maintenance, £10,000.

Treatment of certain works contracts as a single contract

4. For the purposes of determining whether the value of a works contract exceeds the amount prescribed by regulation 3 above for a contract of that description, the value of any other contract made within the preceding 6 months for work of similar description on the same site or surface or on an adjacent site or surface shall be treated as forming part of the value of that contract.

Requirement to tender for certain works contracts

5.—(1) In relation to a works contract to which this paragraph applies, the following condition is prescribed for the purposes of section 7(1)(b) of the Act (conditions to be complied with in the case of a works contract the value of which is equal to or less than the prescribed amount) namely, that the contract is entered into as the result of acceptance of a tender within the meaning of section 7(3) of the Act⁽⁸⁾.

- (2) Subject to regulation 6 below, paragraph (1) above applies—
 - (a) to any works contract of a value which does not exceed £25,000 providing or providing principally for the carrying out of general highway works if the value of the contract together with the value of all relevant highway work previously undertaken by the authority otherwise in accordance with section 7 or the conditions mentioned in section 9(3)(a) of the Act in the same financial year exceeds the relevant limit;
 - (b) to any works contract of a value which does not exceed £50,000 providing or providing principally for the carrying out of general water and sewerage works;
 - (c) to any works contract of a value which does not exceed £50,000 providing or providing principally for the carrying out of works of new construction;
 - (d) to any works contract of a value which does not exceed £10,000 providing or providing principally for the carrying out of works of maintenance.

⁽⁸⁾ Section 7(3) was amended by the Local Government Act 1988, Schedule 6, paragraph 2(4).

(3) For the purposes of paragraph (2)(a), the relevant limit is 40% of the aggregate value of all relevant highway work undertaken and all contractual highway work carried out by the authority in the immediately preceding financial year.

Exempted works contracts

6. Section 7(1) of the Act shall not apply to a works contract where it is such a contract entered into for the carrying out of emergency work, the carrying out of trunk road work let in competition or the gritting of or clearing of snow from highways.

Functional work

7.—(1) Subject to regulation 8 below, a local authority may not undertake functional work of any of the descriptions mentioned in paragraph (2) below unless they have first complied with the conditions specified in section 9(4) of the Act as well as with the terms of section 9(2).

(2) Functional work of the descriptions mentioned in this paragraph are the following:—

- (a) a job consisting or consisting principally of general highway works where the estimated cost of the job exceeds £25,000;
- (b) a job consisting or consisting principally of general water and sewerage works;
- (c) a job consisting or consisting principally of works of new construction;
- (d) a job consisting or consisting principally of works of maintenance;
- (e) a job consisting or consisting principally of general highway works where the estimated cost of the job does not exceed £25,000 if the estimated cost of the job together with the aggregate value of all relevant highway work previously undertaken by the authority otherwise than in accordance with section 7 or the conditions mentioned in section 9(3)(a) of the Act in the same financial year exceeds the relevant limit.

(3) For the purpose of paragraph (2)(e), the relevant limit is 40% of the aggregate value of all relevant highway work undertaken and all contractual highway work carried out by that authority in the immediately preceding financial year.

Exempted functional work

8.—(1) Regulation 7 above shall not apply to emergency work, trunk road work let in competition, the gritting of or the clearing of snow from highways or work comprising a job satisfying the conditions specified in paragraph (2) below.

(2) The conditions referred to in paragraph (1) above are that the work—

- (a) is a job for the carrying out of works of new construction, general highway works, or for the construction of a sewer;
- (b) is a further job, the estimated cost of which does not exceed by more than 10% the estimated cost of an earlier job of a similar description undertaken by the authority in question in the immediately preceding 12 months, and in relation to which the estimated cost of each separate item of work comprised and priced in the further job does not exceed by more than 10% the estimated cost of each corresponding item of work (if any) comprised and priced in the earlier job; and
- (c) is to be carried out on the same site or surface as the work comprised in the earlier job or on sites or surfaces adjacent to those on which the work comprised in the earlier job has been or is to be carried out.

(3) For the purposes of paragraph (2) above a job is an earlier job, if and only if—

- (a) it was undertaken following an invitation to tender which was extended to at least three other persons who were not, or included at least three other persons who were not, local authorities;
- (b) the estimated cost of the job submitted by the local authority was lower than the lowest tender submitted following that invitation; and
- (c) the job has not been renewed (either by extension of time or the undertaking of a new job of a similar description) unless the invitation to tender, following which it was undertaken, specifically referred to the award to the successful tenderer of one or more further contracts.

Conditions in respect of certain functional work

9.—(1) Subject to paragraph (3) below, a local authority shall not, unless they have first complied with the conditions specified in paragraph (2) below, as well as with the terms of section 9(2) of the Act, undertake functional work which is—

- (a) the gritting of or the clearing of snow from highways; or
 - (b) a job consisting or consisting principally of general highway works where—
 - (i) the estimated cost of the job does not exceed £25,000; and
 - (ii) the job is not within regulation 7(2)(e) above.
- (2) The conditions mentioned in paragraph (1) above are—
- (a) that the authority shall be satisfied that the amount for the functional work in question to be credited in terms of the written statement required by section 9(2) of the Act is reasonable, having regard to any previous estimate of the cost of the work made by the authority and their knowledge of how much it would be likely to cost for a person other than the authority to carry out the work; and
 - (b) that the authority shall put on public display at their principal office a notice summarising the contents of the statement required by section 9(2) of the Act in respect of the functional work in question.

(3) Paragraph (1) above shall not apply to functional work which the authority are undertaking after complying with the conditions specified in section 9(4) of the Act.

Revocations

10. The Local Government, Planning and Land Act 1980 (Competition) (Scotland) Regulations 1995⁽⁹⁾ and the Local Government, Planning and Land Act 1980 (Competition) (Scotland) Amendment Regulations 1996⁽¹⁰⁾ are hereby revoked.

Scottish Office
20th November 1996

George Kynoch
Parliamentary Under Secretary of State,

⁽⁹⁾ S.I.1995/677.
⁽¹⁰⁾ S.I. 1996/2936.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations replace on 1st July 1997 the Local Government, Planning and Land Act 1980 (Competition) (Scotland) Regulations 1995, as amended, by changing the levels above which certain services provided by local authorities require to be exposed to competitive tender. The 1995 Regulations, which required less work to be exposed to competitive tender than had previously been the case, were enacted in recognition of the additional administrative work which local government reorganisation placed upon local authorities.

Under these Regulations, the requirements imposed by the Local Government, Planning and Land Act 1980 will apply to any works contract where the value of any work exceeds £25,000 (general highway work), £50,000 (general water and sewerage work and works of new construction) and £10,000 (works of maintenance) (regulations 3 and 4). For work below those levels, a contract can be entered into only following the acceptance of a tender, with the exception of certain highway jobs not exceeding £25,000 (regulation 5).

All functional work consisting of general highway work, general water and sewerage work and works of new construction and maintenance must meet the competitive tendering requirements of the 1980 Act, with the exception of certain highway jobs not exceeding £25,000 (regulation 7).

Emergency work (as defined in regulation 2), work won in competition let by the Secretary of State in respect of trunk road work (also as defined) and gritting of and clearing of snow from highways are exempted from the effect of the Regulations, as is functional work in certain cases where a further job is to be carried out (regulations 6 and 8).

These Regulations also lay down conditions which authorities must comply with before carrying out highway jobs not exceeding £25,000 and the gritting of and clearing of snow from highways at their own hand.