
STATUTORY INSTRUMENTS

1995 No. 678 (S.55)

LOCAL GOVERNMENT, SCOTLAND

**The Local Government (Exemption from
Competition) (Scotland) Order 1995**

<i>Made</i>	- - - -	<i>8th March 1995</i>
<i>Laid before Parliament</i>		<i>10th March 1995</i>
<i>Coming into force</i>	- -	<i>31st March 1995</i>

The Secretary of State, in exercise of the powers conferred on him by sections 2(10) and 15(5) and (7) of the Local Government Act 1988(1), and of all other powers enabling him in that behalf, hereby makes the following Order:

Citation, commencement and extent

1.—(1) This Order may be cited as the Local Government (Exemption from Competition) (Scotland) Order 1995 and shall come into force on 31st March 1995.

(2) This Order shall extend to Scotland only.

Interpretation and application

2.—(1) In this Order, unless the context otherwise requires—

“the Act” means the Local Government Act 1988;

“the exemption end date” shall be construed in accordance with article 7;

“the exempt period” means (subject to article 8) the period from 31st March 1995 until (but not including) the exemption end date;

“existing contract” means a contract, for the carrying out of work falling within a defined activity to which this Order applies, entered into prior to 31st March 1995 but shall not include any arrangement made by a local authority for the carrying out of functional work through their direct labour organisation or a similar organisation;

“local authority” means—

(1) 1988 c. 9; section 2(10) was inserted and section 15(5) amended by the Local Government etc. (Scotland) Act 1994 (c. 39), Schedule 13, paragraph 156(3) and (4). See section 1(1) of the 1988 Act for the definition of “defined authority”.

- (a) prior to 1st April 1996, a regional, islands or district council or any joint board or joint committee within the meaning of the Local Government (Scotland) Act 1973⁽²⁾; and
- (b) on and after 1st April 1996, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 or any joint board or joint committee within the meaning of the Local Government (Scotland) Act 1973.

(2) Except where the context otherwise requires, any reference to Part I of the Act or to any numbered section or subsection of Part I of the Act shall be taken as a reference to that Part, section or subsection, as it has effect immediately before the coming into force of this Order⁽³⁾, and any reference in this Order to a numbered article, paragraph or Schedule shall be taken as a reference to the article, paragraph or Schedule, as the case may be, bearing that number in this Order or in that article, as the case may be.

(3) This Order shall apply to the defined activities specified at section 2(2)(a), (b), (c), (d), (e), (ee), (f) and (g) of the Act⁽⁴⁾.

3. Subject to the provisions of this Order, Part I of the Act shall, from 31st March 1995 to 31st December 2000, apply to local authorities, subject to the modifications specified in Schedule 1.

Transitional provisions and savings

4. Nothing in this Order shall affect any existing contract nor in particular shall entitle a local authority to terminate or vary an existing contract before the expiry of the period during which any work is to be carried out in terms of section 7(3)(c) of the Act.

5. The modifications to section 11 of the Act specified at paragraph 9 of Schedule 1 shall have effect only in relation to a financial year beginning after 31st March 1995.

6. Nothing in this Order shall affect the obligations of local authorities arising under Part I of the Act as regards any financial year up to and including the financial year beginning 1st April 1994 and, without prejudice to the powers of the Secretary of State contained in section 14(3) to (4C) of the Act⁽⁵⁾, nothing in this Order shall—

- (a) affect either the terms of, or the duty of a local authority to comply with, a direction issued under section 14(2) of the Act (whether served before, after or on 31st March 1995); or
- (b) affect the duty of a local authority to comply with Part I of the Act in implementing or fulfilling the conditions specified in a direction issued under section 14(2)(c) or (d) of the Act (whether served before, after or on 31st March 1995).

Provision as to end of exemption

7.—(1) In respect of each local authority specified in column 1 of Schedule 2, the exemption end date for that authority is—

- (a) in respect of collection of refuse, the date specified opposite that authority in column 2 of that Schedule;
- (b) in respect of cleaning of buildings, the date specified opposite that authority in column 3 of that Schedule;
- (c) in respect of other cleaning, the date specified opposite that authority in column 4 of that Schedule;

(2) 1973 c. 65.

(3) Part I of the Act was amended by the Local Government Act 1992 (c. 19), Schedule 1, paragraphs 10 to 14.

(4) Section 2(2)(ee) was added by S.I.1989/2488.

(5) Section 14(4A) to (4C) was added by the Local Government Act 1992, Schedule 1, paragraph 14.

- (d) in respect of catering for purposes of schools and welfare, the date specified opposite that authority in column 5 of that Schedule;
 - (e) in respect of other catering, the date specified opposite that authority in column 6 of that Schedule;
 - (f) in respect of maintenance of ground, the date specified opposite that authority in column 7 of that Schedule;
 - (g) in respect of repair and maintenance of vehicles, the date specified opposite that authority in column 8 of that Schedule; and
 - (h) in respect of managing sports and leisure facilities, the date specified opposite that authority in column 9 of that Schedule.
- (2) In respect of any joint committee or joint board, the exemption end date shall be 1st July 1998 in respect of each of the defined activities to which this Order applies.

Transitional provision as to end of exemption

8.—(1) For the purposes of section 6(6) of the Act (as inserted by paragraph 4 of Schedule 1), the exempt period, in respect of particular work shall, provided that the authority concerned complies with the requirement specified in paragraph (2), be treated as continuing until the beginning (in accordance with regulation 3 of the Local Government (Direct Service Organisations) (Competition) Regulations 1993(6)) of the period during which that work is to be carried out.

(2) The requirement referred to in paragraph (1) is that the announcement of the decision by the authority (in accordance with regulation 5(b) of the said Regulations of 1993) as to who shall carry out the work described in the notice required by section 7(1) of the Act is made on a date prior to the exemption end date.

St Andrew's House,
Edinburgh
8th March 1995

George Kynoch
Parliamentary Under Secretary of State, Scottish
Office

SCHEDULE 1

Article 3

MODIFICATIONS OF PART I OF THE ACT

1. After section 1(4), there shall be inserted—
 - “(5) In this Part—
 - “the 1995 Order” means the Local Government (Exemption from Competition) (Scotland) Order 1995;
 - “the exemption end date” has the meaning assigned to it in the 1995 Order;
 - “the exempt period” has the meaning assigned to it in the 1995 Order.”.
2. For section 4(7), there shall be substituted—

“(7) This section applies where it is proposed to enter into the works contract on or after the exemption end date.”.
3. For section 5(1), there shall be substituted—
 - (1) Where—
 - (a) a defined authority (as a bidding authority) entered into a works contract in the exempt period, and
 - (b) had they entered into the contract on the exemption end date they would have infringed section 4 above,on that date the parties to the contract shall cease to have power to carry it out.”.
4. In section 6—
 - (a) in subsection (5), for the words “any date specified in the regulations” substitute the words “the exemption end date”; and
 - (b) after subsection (5), there shall be inserted—

“(6) This section does not apply to functional work carried out in the exempt period.”.
5. After section 9(4), there shall be inserted—

“(4A) In the application of subsection (4) above in the exempt period (and any continuation thereof in terms of article 8 of the 1995 Order)—

 - (a) where an existing contract (within the meaning of the 1995 Order) has expired; or
 - (b) where it is intended to carry out functional work falling within a defined activity to which that Order applies following the expiry or termination of an arrangement with that authority’s direct labour organisation (or similar organisation) or the variation of such arrangement which would constitute a breach of the sixth condition had section 6 above applied; or
 - (c) where work falls anew or for the first time within a defined activity,a local authority shall, before carrying out that work, prepare a detailed specification and shall prepare a bid in terms of section 7(6) above, for a period not extending beyond the end of the exempt period (or any continuation thereof as aforesaid), which bid shall be taken as being the bid referred to in subsection (4) above to carry out that work through that authority’s direct labour organisation (or similar organisation).”.
6. After section 9(7) there shall be inserted—

“(8) In respect of the period from 31st March 1995 until the end of the financial year within which the exemption end date falls, subsections (1) to (7) above shall apply, subject to the following modifications:—

- (a) in subsection (1) the words—
 - “and fulfils the condition that—
 - (a) it is carried out under a works contract to which section 4 above applies,
or
 - (b) section 6 above applies to it”

shall not apply; and

- (b) in subsection (2) for the words “, is carried out by them in that year and fulfils that condition” substitute the words “and is carried out by them in that year”.

7. After section 10(4) there shall be inserted—

“(5) In respect of the period from 31st March 1995 until the end of the financial year within which the exemption end date falls, subsections (1) to (4) above shall apply, subject to the following modifications:—

- (a) in subsection (1) the words—
 - “and fulfils the condition that—
 - (a) it is carried out under a works contract to which section 4 above applies,
or
 - (b) section 6 above applies to it”

shall not apply; and

- (b) in subsection (2)(a) for the words “, is carried out by them in that year and fulfils that condition” substitute the words “and is carried out by them in that year”.

8. After section 11(7) there shall be inserted—

“(7A) In respect of the report to be prepared in regard to the financial year beginning 1st April 1995, subsection (7) above shall apply subject to the following modifications:—

- (a) for the words “30th September” substitute the words “31st December”; and
- (b) for the words “31st October” substitute the words “31st January”.

9. After section 11(9) there shall be inserted—

“(10) In respect of the period from 31st March 1995 until the end of the financial year following the financial year within which the exemption end date falls, subsections (1) to (9) above shall apply subject to the following modifications:—

- (a) in subsection (1) the words—
 - “and fulfils the condition that—
 - (a) it is carried out under a works contract to which section 4 above applies,
or
 - (b) section 6 above applies to it”

shall not apply;

- (b) in subsection (2) for the words “, is carried out by them in that year and fulfils that condition” substitute the words “and is carried out by them in that year”;

- (c) subsection (2)(e) shall not apply; and

- (d) in subsection (5)—

- (i) insert the word “and” after the word “activity”; and

- (ii) the words—

“and fulfils the condition that—

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

(a) it was carried out under a works contract to which section 4 above applies, or
 (b) section 6 above applies to it”
 shall not apply.”.

SCHEDULE 2

Article 7(1)

EXEMPTION END DATES

Column 1	Column 2 Collection of Refuse	Column 3 Cleaning of Buildings	Column 4 Other Cleaning	Column 5 Catering for purposes of Schools and Welfare	Column 6 Other Catering	Column 7 Maintenance of Ground	Column 8 Repair and Maintenance of Vehicles	Column 9 Managing Sports Ground and Leisure Facilities
City of Aberdeen	1 July 1997	1 November 1997	1 September 1997	1 July 1998	1 May 1998	1 March 1998	1 January 1998	1 October 1997
Aberdeenshire	1 March 1998	1 November 1997	1 May 1998	1 July 1998	1 January 1998	1 October 1997	1 September 1997	1 July 1997
Angus	1 January 1998	1 November 1997	1 March 1998	1 May 1998	1 July 1998	1 September 1997	1 July 1997	1 October 1997
Argyll and Bute	1 January 1998	1 September 1997	1 March 1998	1 July 1998	1 May 1998	1 November 1997	1 July 1997	1 October 1997
East Ayrshire	1 March 1998	1 September 1997	1 May 1998	1 July 1998	1 January 1998	1 October 1997	1 November 1997	1 July 1997
North Ayrshire	1 July 1997	1 September 1997	1 November 1997	1 July 1998	1 May 1998	1 March 1998	1 January 1998	1 October 1997
South Ayrshire	1 November 1997	1 September 1997	1 July 1997	1 July 1998	1 May 1998	1 March 1998	1 January 1998	1 October 1997
The Borders	1 July 1998	1 July 1997	1 May 1998	1 September 1997	1 October 1997	1 March 1998	1 January 1998	1 November 1997
Clackmannanshire	1 July 1997	1 January 1998	1 September 1997	1 May 1998	1 July 1998	1 November 1997	1 March 1998	1 October 1997

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

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9
	Collection of Refuse	Cleaning of Buildings	Other Cleaning	Catering for purposes of Schools and Welfare	Other Catering	Maintenance of Ground	Repair and Maintenance of Vehicles	Managing Sports and Leisure Facilities
Dumfries and Galloway	1 January 1998	1 September 1997	1 March 1998	1 July 1998	1 May 1998	1 October 1997	1 November 1997	1 July 1997
Dumfries and Galloway	1 July 1998	1 September 1997	1 May 1998	1 July 1997	1 October 1997	1 January 1998	1 November 1997	1 March 1998
East Dunbartonshire	1 November 1997	1 September 1997	1 January 1998	1 July 1998	1 May 1998	1 October 1997	1 July 1997	1 March 1998
City of Dundee	1 October 1997	1 November 1997	1 January 1998	1 May 1998	1 July 1998	1 March 1998	1 September 1997	1 July 1997
City of Edinburgh	1 September 1997	1 January 1998	1 July 1997	1 July 1998	1 March 1998	1 October 1997	1 May 1998	1 November 1997
Falkirk	1 July 1997	1 January 1998	1 September 1997	1 May 1998	1 July 1998	1 November 1997	1 March 1998	1 October 1997
Fife	1 March 1998	1 October 1997	1 May 1998	1 July 1997	1 September 1997	1 January 1998	1 November 1997	1 July 1998
City of Glasgow	1 January 1998	1 September 1997	1 March 1998	1 July 1998	1 May 1998	1 July 1997	1 November 1997	1 October 1997
Highland	1 July 1998	1 September 1997	1 May 1998	1 July 1997	1 November 1997	1 October 1997	1 January 1998	1 March 1998
Inverclyde	1 July 1997	1 September 1997	1 October 1997	1 July 1998	1 May 1998	1 March 1998	1 November 1997	1 January 1998
North Lanarkshire	1 May 1998	1 September 1997	1 January 1998	1 July 1998	1 March 1998	1 July 1997	1 October 1997	1 November 1997
South Lanarkshire	1 March 1998	1 September 1997	1 May 1998	1 July 1998	1 January 1998	1 July 1997	1 October 1997	1 November 1997

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

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9
	Collection of Refuse	Cleaning of Buildings	Other Cleaning	Catering for purposes of Schools and Welfare	Other Catering	Maintenance of Ground	Repair and Maintenance of Vehicles	Managing Sports and Leisure Facilities
East Lothian	1 September 1997	1 January 1998	1 July 1997	1 July 1998	1 March 1998	1 November 1997	1 May 1998	1 October 1997
Midlothian	1 July 1997	1 January 1998	1 September 1997	1 July 1998	1 March 1998	1 November 1997	1 May 1998	1 October 1997
West Lothian	1 September 1997	1 January 1998	1 July 1997	1 July 1998	1 March 1998	1 October 1997	1 May 1998	1 November 1997
Moray	1 September 1997	1 November 1997	1 July 1997	1 July 1998	1 January 1998	1 March 1998	1 May 1998	1 October 1997
Orkney Islands	1 March 1998	1 October 1997	1 May 1998	1 July 1998	1 January 1998	1 September 1997	1 July 1997	1 November 1997
Perthshire and Kinross	1 October 1997	1 November 1997	1 September 1997	1 May 1998	1 March 1998	1 July 1997	1 January 1998	1 July 1998
East Renfrewshire	1 October 1997	1 September 1997	1 November 1997	1 July 1998	1 May 1998	1 July 1997	1 March 1998	1 January 1998
Renfrewshire	1 November 1997	1 September 1997	1 October 1997	1 July 1998	1 March 1998	1 July 1997	1 May 1998	1 January 1998
Shetland Islands	1 May 1998	1 October 1997	1 March 1998	1 July 1998	1 January 1998	1 November 1997	1 July 1997	1 September 1997
Stirling	1 September 1997	1 January 1998	1 July 1997	1 May 1998	1 March 1998	1 November 1997	1 July 1998	1 October 1997
Western Isles	1 March 1998	1 October 1997	1 May 1998	1 July 1998	1 January 1998	1 November 1997	1 July 1997	1 September 1997

EXPLANATORY NOTE

(This note is not part of the Order)

In recognition of the additional administrative responsibilities on local authorities in Scotland, arising from local government reorganisation, this Order modifies the application of compulsory competitive tendering (CCT) under Part I (competition) of the Local Government Act 1988 (“the Act”) to those authorities.

The Order amends the requirement on authorities to expose to competition certain activities set out at section 2(2) of the Act so that section 4 of the Act (works contracts) and section 6 of the Act (functional work) will not require to be complied with until the exemption end date (article 3 and Schedule 1). That date is a different date for particular authorities for particular activities (article 7 and Schedule 2). Obligations in respect of accounts under Part I of the Act remain and are modified principally to reflect the removal of the competition requirement.

Schedule 1 to the Order specifies modifications to Part I of the Act in respect of interpretation (paragraph 1), temporary disapplication of competition requirements (paragraph 2 to 4) and accounts (paragraphs 5 to 9).

Articles 4, 5 and 6 make transitional and savings provisions in respect of the introduction of the exemption.

Article 8 provides that at the reintroduction of competition, authorities are to be regarded as complying with their CCT obligations, if by the exemption end date they have already announced who will carry out the functional work following a competitive process, even though the contract will not fall to commence until 1 to 4 months thereafter.