
STATUTORY INSTRUMENTS

1997 No. 197 (S.12)

LOCAL GOVERNMENT, SCOTLAND

**The Local Government Act 1988
(Competition) (Scotland) Regulations 1997**

<i>Made</i>	- - - -	<i>31st January 1997</i>
<i>Laid before Parliament</i>		<i>3rd February 1997</i>
<i>Coming into force</i>	- -	<i>3rd March 1997</i>

The Secretary of State, in exercise of the powers conferred on him by sections 6(3) and 15(6) and (7) of the Local Government Act 1988⁽¹⁾ and of 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 Act 1988 (Competition) (Scotland) Regulations 1997 and shall come into force on 3rd March 1997.

(2) These Regulations apply to councils constituted under section 2 of the Local Government etc. (Scotland) Act 1994⁽²⁾ and to joint boards and joint committees within the meaning of the Local Government (Scotland) Act 1973⁽³⁾, but do not apply to—

- (a) joint boards constituted by an amalgamation scheme order made under section 21B of the Police (Scotland) Act 1967 (reorganisation of police areas)⁽⁴⁾; or
- (b) the Dumfries and Galloway Council or the Fife Council in respect of their functions as a police authority under the said Act of 1967.

Interpretation

2. In these Regulations, unless the context otherwise requires—

“the Act” means the Local Government Act 1988;

“the 1980 Act” means the Local Government, Planning and Land Act 1980⁽⁵⁾;

(1) 1988 c. 9; section 6(3) was amended by paragraph 12 of Schedule 1 to the Local Government Act 1992 (c. 19).
(2) 1994 c. 39; section 2(2) was amended by the Environment Act 1995 (c. 25), Schedule 22, paragraph 232(1).
(3) 1973 c. 65.
(4) 1967 c. 77; section 21B was inserted by the Local Government etc. (Scotland) Act 1994 (c. 39), section 34.
(5) 1980 c. 65.

“construction and property services” means the defined activity mentioned in section 2(2)(k) of the Act(6);

“the cost”, in relation to a defined activity, means the estimated total annual cost including overheads, provided that these overheads are not treated by a defined authority as forming part of the cost of–

- (a) another defined activity; or
- (b) work to which Part III of the 1980 Act applies;

“defined authority” means an authority to whom and to which extent these Regulations apply;

“financial services” means the defined activity mentioned in section 2(2)(l) of the Act(7);

“housing management” means the defined activity mentioned in section 2(2)(h) of the Act(8);

“information technology services” means the defined activity mentioned in section 2(2)(m) of the Act(9);

“legal services” means the defined activity mentioned in section 2(2)(j) of the Act(10);

“management of vehicles” means the defined activity mentioned in section 2(2)(gg) of the Act(11);

“personnel services” means the defined activity mentioned in section 2(2)(n) of the Act(12);

“professional services” means the defined activities of–

- (a) legal services;
- (b) construction and property services;
- (c) financial services;
- (d) information technology services; and
- (e) personnel services;

“security work” means the defined activity mentioned in section 2(2)(i) of the Act(13);

“the specified proportion” means for professional services an amount calculated–

- (a) in respect of legal services in accordance with Schedule 1 to these Regulations;
- (b) in respect of construction and property services in accordance (subject to regulation 7 below) with Schedule 2 to these Regulations;
- (c) in respect of financial services in accordance (subject to regulation 7 below) with Schedule 3 to these Regulations;
- (d) in respect of information technology services in accordance with Schedule 4 to these Regulations; and
- (e) in respect of personnel services in accordance (subject to regulation 7 below) with Schedule 5 to these Regulations;

(6) Section 2(2)(k) was added by article 2(1) of the Local Government Act 1988 (Competition) (Defined Activities) (Construction and Property Services) Order 1994 (S.I. 1994/2888).

(7) Section 2(2)(l) was added by article 2 of the Local Government Act 1988 (Competition) (Defined Activities) Order 1995 (S.I. 1995/1915) (“the 1995 Order”).

(8) Section 2(2)(h) was added by article 2(1)(b) of the Local Government Act 1988 (Competition) (Defined Activities) (Housing Management) Order 1994 (S.I. 1994/1671).

(9) Section 2(2)(m) was added by article 2 of the 1995 Order.

(10) Section 2(2)(j) was added by article 2(1)(b) of the Local Government Act 1988 (Competition) (Defined Activities) Order 1994 (S.I. 1994/2884) (“the 1994 Order”).

(11) Section 2(2)(gg) was added by article 2(1)(a) of the 1994 Order.

(12) Section 2(2)(n) was added by article 2 of the 1995 Order.

(13) Section 2(2)(i) was added by article 2(1)(b) of the 1994 Order.

“specified work” means work of any description falling within the activity concerned, other than work carried out by a bidding authority to which section 4 of the Act (works contracts; restrictions)(14) applies;

“voluntary competitive tendering” means the award of work before 2nd April 1994 following a competitive process in the course of which at least three persons who are not defined authorities were invited to tender for that work.

Application of section 6 – management of vehicles

3. Subject to regulation 8 below, section 6 of the Act shall apply to functional work of any description falling within management of vehicles if it is proposed to be carried out by a defined authority specified in column 1 of Schedule 6 to these Regulations on or after the date specified in column 2 of that Schedule opposite that authority.

Application of section 6 – housing management

4.—(1) Subject to regulation 8 below, section 6 of the Act shall apply to the specified proportion of any specified work falling within housing management if it is proposed to be carried out by a defined authority on or after 1st April 1999.

(2) Subject to regulation 8 below, where a defined authority proposes to carry out any specified work falling within housing management in the financial year beginning on 1st April 1998, section 6 of the Act shall apply in that financial year to the specified proportion of that work.

(3) In paragraph (1) above, the specified proportion is an amount equal to 95% of the cost to the defined authority of the work.

(4) In paragraph (2) above, the specified proportion is an amount equal to 30% of the product of the following formula:—

$$T - (A + B)$$

where—

T = an amount equal to the cost to the defined authority of the work;

A = 5% of T; and

B = for the period ending on 1st April 1999, or five years after work was awarded, whichever is the shorter, an amount equal to the cost of specified work which is being carried out following voluntary competitive tendering.

Application of section 6 – security work

5. Section 6 of the Act shall apply to functional work of any description falling within security work if it is proposed to be carried out by a defined authority on or after 1st July 1998.

Application of section 6 – professional services

6.—(1) Section 6 of the Act shall apply to the specified proportion of any specified work falling within a professional service if it is proposed to be carried out by a defined authority on or after 1st October 1999.

(2) Where a defined authority proposes to carry out any specified work falling within a professional service in the period from 1st October 1998 to 31st March 1999 (inclusive), section 6 of the Act shall apply in that period to one third of the cumulative total of the specified proportions of work falling within the professional services.

(14) Section 4 of the Act was amended by paragraph 11 of Schedule 1 to the Local Government Act 1992.

(3) Where a defined authority proposes to carry out any specified work falling within a professional service in the period from 1st April 1999 to 30th September 1999 (inclusive), section 6 of the Act shall apply in that period to two-thirds of the cumulative total of the specified proportions of work falling within the professional services.

(4) This regulation is subject to regulation 8 below.

Joint fire boards – special provisions

7.—(1) In respect of defined authorities to which this regulation applies—

- (a) paragraph 1(b) of Schedule 2 shall have effect as if, in paragraph (b) of component C, “£450,000” were substituted for “£300,000”;
- (b) paragraph 1(b) of Schedule 3 shall have effect as if, in paragraph (a) of component C, “65%” were substituted for “50%”; and
- (c) paragraph 1(b) of Schedule 5 shall have effect as if—
 - (i) in paragraph (a) of component C, “85%” were substituted for “60%”; and
 - (ii) in paragraph (b) of that component, “£400,000” were substituted for “£300,000”.

(2) This regulation applies to joint boards constituted by an administration scheme order made under section 147 of the Local Government (Scotland) Act 1973 (fire services)(15).

Provision as to dates for the purposes of section 6

8.—(1) For the purposes of section 6 of the Act, a defined authority in respect of particular work shall, provided that they comply with the requirement specified in paragraph (2) below, be taken as having fulfilled their obligations under Part I of the Act as to the date after which an authority cannot carry out that work without complying with the six conditions if, by the date specified in these Regulations for that purpose, the authority have announced their decision as to who should carry out the work.

(2) The requirement referred to in paragraph (1) above is that the period between making the announcement of the relevant decision and the beginning of the period during which that work is to be carried out shall not be more than 3 months.

(3) This regulation shall apply only—

- (a) in respect of management of vehicles, housing management and professional services; and
- (b) to the first occasion when those services require to be let in terms of these Regulations in accordance with Part I of the Act.

St Andrew’s House,
Edinburgh
31st January 1997

George Kynoch
Parliamentary Under Secretary of State, Scottish
Office

(15) Section 147 was substituted by the Local Government etc. (Scotland) Act 1994, section 36.

SCHEDULE 1

Regulation 2

SPECIFIED PROPORTION—LEGAL SERVICES

1. The specified proportion in respect of legal services means the greater of—

- (a) £0; or
- (b) an amount equal to the product of the following formula—

$$T \ (A + B + C + D + E + F + G - H)$$

where

- T = an amount equal to the cost to a defined authority of the specified work;
- A = an amount equal to the cost of specified work which is being carried out by a person other than a defined authority in connection with—
 - (a) work falling within any other defined activity; or
 - (b) work to which Part III of the 1980 Act applies, where that work is being carried out by another person on behalf of a defined authority;
- B = an amount equal to any amount included in T in respect of goods or services which are provided by a person other than a defined authority;
- C = an amount equal to whichever is the greater of—
 - (a) 55% of (T - (A + B));
 - (b) £300,000;
- D = for the period ending on 1st April 1999 or five years after work was awarded, whichever is the shorter, an amount equal to the cost of specified work which is being carried out following voluntary competitive tendering;
- E = an amount equal to the cost of any specified work being carried out following a competitive tendering process in respect of that work conducted in accordance with the provisions of the Act;
- F = an amount equal to the cost of any specified work being carried out by a person other than a defined authority following a competitive tendering process where—
 - (a) no defined authority submitted a bid to carry out that work; and
 - (b) that work had previously been carried out by the defined authority conducting that process or by a predecessor of that authority;
- G = an amount equal to the cost of specified work carried out by a defined authority which is funded from a school's devolved budget allocated under a local authority's devolved school management scheme; and
- H = until 1st April 1999, an amount equal to the cost of specified work which is being carried out by a defined authority in connection with functional work falling within housing management where that functional work is not subject to section 6 of the Act.

2. Where an amount is counted towards any such cost or amount as is specified in component A, B, D, E, F, G or H in paragraph 1(b) above—

- (a) that amount may not be counted towards any other cost or amount in any such component; and
- (b) that amount may not be counted towards any cost or amount in any component in paragraph 1(b) of Schedule 2, 3, 4 or 5 to these Regulations.

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SCHEDULE 2

Regulation 2

SPECIFIED PROPORTION—CONSTRUCTION AND PROPERTY SERVICES

1. The specified proportion in respect of construction and property services means the greater of—
- (a) £0; or
 - (b) an amount equal to the product of the following formula—

$$T - (A + B + C + D + E + F + G + H);$$

where

- T = an amount equal to the cost to a defined authority of the specified work;
- A = an amount equal to the cost of specified work which is being carried out by a person other than a defined authority in connection with—
- (a) work falling within any other defined activity; or
 - (b) work to which Part III of the 1980 Act applies,
- where that work is being carried out by another person on behalf of a defined authority;
- B = an amount equal to any amount included in T in respect of goods or services which are provided by a person other than a defined authority;
- C = an amount equal to whichever is the greater of—
- (a) 35% of (T - (A + B));
 - (b) £300,000;
- D = for the period ending on 1st April 1999 or five years after work was awarded, whichever is the shorter, an amount equal to the cost of specified work which is being carried out following voluntary competitive tendering;
- E = an amount equal to the cost of any specified work being carried out following a competitive tendering process in respect of that work conducted in accordance with the provisions of the Act;
- F = an amount equal to the cost of any specified work being carried out by a person other than a defined authority following a competitive tendering process where—
- (a) no defined authority submitted a bid to carry out that work; and
 - (b) that work had previously been carried out by the defined authority conducting that process or by a predecessor of that authority;
- G = an amount equal to the cost of specified work carried out by a defined authority which is funded from a school's devolved budget allocated under a local authority's devolved school management scheme; and
- H = until 1st April 1999, an amount equal to the cost of specified work which is being carried out by a defined authority in connection with functional work falling within housing management where that functional work is not subject to section 6 of the Act.

2. Where an amount is counted towards any such cost or amount as is specified in component A, B, D, E, F, G or H in paragraph 1(b) above—
- (a) that amount may not be counted towards any other cost or amount in any such component; and
 - (b) that amount may not be counted towards any cost or amount in any component in paragraph 1(b) of Schedule 1, 3, 4 or 5 to these Regulations.

SCHEDULE 3

Regulation 2

SPECIFIED PROPORTION—FINANCIAL SERVICES

1. The specified proportion in respect of financial services means the greater of—

- (a) £0; or
- (b) an amount equal to the product of the following formula—

$$T - (A + B + C + D + E - F + G + H);$$

where

- T = an amount equal to the cost to a defined authority of the specified work and of determination work;
- A = an amount equal to the cost of specified work which is being carried out by a person other than a defined authority in connection with—
 - (a) work falling within any other defined activity; or
 - (b) work to which Part III of the 1980 Act applies, where that work is being carried out by another person on behalf of a defined authority;
- B = an amount equal to any amount included in T in respect of goods or services which are provided by a person other than a defined authority;
- C = an amount equal to whichever is the greater of—
 - (a) 50% of (T - (A + B));
 - (b) £300,000;
- D = for the period ending on 1st April 1999 or five years after work was awarded, whichever is the shorter, an amount equal to the cost of specified work which is being carried out following voluntary competitive tendering;
- E = an amount equal to the cost of any specified work being carried out following a competitive tendering process in respect of that work conducted in accordance with the provisions of the Act;
- F = an amount equal to the cost of any specified work being carried out by a person other than a defined authority following a competitive tendering process where—
 - (a) no defined authority submitted a bid to carry out that work; and
 - (b) that work had previously been carried out by the defined authority conducting that process or by a predecessor of that authority;
- G = an amount equal to the cost of specified work carried out by a defined authority which is funded from a school's devolved budget allocated under a local authority's devolved school management scheme; and
- H = until 1st April 1999, an amount equal to the cost of specified work which is being carried out by a defined authority in connection with functional work falling within housing management where that functional work is not subject to section 6 of the Act.

2. Where an amount is counted towards any such cost or amount as is specified in component A, B, D, E, F, G or H in paragraph 1(b) above—

- (a) that amount may not be counted towards any other cost or amount in any such component; and
- (b) that amount may not be counted towards any cost or amount in any component in paragraph 1(b) of Schedule 1, 2, 4 or 5 to these Regulations.

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3. In paragraph 1 above, “determination work” means work in connection with the determination of payments in pursuance of any functions conferred on an authority by or under the Social Security Contributions and Benefits Act 1992(16) or the Social Security Administration Act 1992(17).

SCHEDULE 4

Regulation 2

SPECIFIED PROPORTION—INFORMATION TECHNOLOGY SERVICES

1. The specified proportion in respect of information technology services means the greater of—
- (a) £0; or
 - (b) an amount equal to the product of the following formula—

$$T (A + B + C + D + E + F + G + H + I);$$

where

- T = an amount equal to the cost to a defined authority of the specified work;
- A = an amount equal to the cost of specified work which is being carried out by a person other than a defined authority in connection with—
- (a) work falling within any other defined activity; or
 - (b) work to which Part III of the 1980 Act applies,
- where that work is being carried out by another person on behalf of a defined authority;
- B = an amount equal to any amount included in T in respect of goods or services which are provided by a person other than a defined authority;
- C = an amount equal to whichever is the greater of—
- (a) 60% of (T – (A + B));
 - (b) £300,000;
- D = for the period ending on 1st April 1999 or five years after work was awarded, whichever is the shorter, an amount equal to the cost of specified work which is being carried out following voluntary competitive tendering;
- E = an amount equal to the cost of any specified work being carried out following a competitive tendering process in respect of that work conducted in accordance with the provisions of the Act;
- F = an amount equal to the cost of any specified work being carried out by a person other than a defined authority following a competitive tendering process where—
- (a) no defined authority submitted a bid to carry out that work; and
 - (b) that work had previously been carried out by the defined authority conducting that process or by a predecessor of that authority;
- G = an amount equal to the cost of specified work carried out by a defined authority which is funded from a school’s devolved budget allocated under a local authority’s devolved school management scheme;
- H = until 1st April 1999, an amount equal to the cost of specified work which is being carried out by a defined authority in connection

(16) 1992 c. 4.

(17) 1992 c. 5.

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- with functional work falling within housing management where that functional work is not subject to section 6 of the Act; and
- I = an amount equal to the cost of specified work which is being carried out by a defined authority at the request of any person (other than a local authority) carrying out work on the authority's behalf, for the purpose of facilitating such work.
2. Where an amount is counted towards any such cost or amount as is specified in component A, B, D, E, F, G, H or I in paragraph 1(b) above—
- (a) that amount may not be counted towards any other cost or amount in any such component; and
 - (b) that amount may not be counted towards any cost or amount in any component in paragraph 1(b) of Schedule 1, 2, 3 or 5 to these Regulations.

SCHEDULE 5

Regulation 2

SPECIFIED PROPORTION—PERSONNEL SERVICES

1. The specified proportion in respect of personnel services means the greater of—
- (a) £0; or
 - (b) an amount equal to the product of the following formula—

$$T - (A + B + C + D + E + F + G + H);$$

where

- T = an amount equal to the cost to a defined authority of the specified work;
- A = an amount equal to the cost of specified work which is being carried out by a person other than a defined authority in connection with—
- (a) work falling within any other defined activity; or
 - (b) work to which Part III of the 1980 Act applies,
- where that work is being carried out by another person on behalf of a defined authority;
- B = an amount equal to any amount included in T in respect of goods or services which are provided by a person other than a defined authority;
- C = an amount equal to whichever is the greater of—
- (a) 60% of $(T - (A + B))$;
 - (b) £300,000;
- D = for the period ending on 1st April 1999 or five years after work was awarded, whichever is the shorter, an amount equal to the cost of specified work which is being carried out following voluntary competitive tendering;
- E = an amount equal to the cost of any specified work being carried out following a competitive tendering process in respect of that work conducted in accordance with the provisions of the Act;
- F = an amount equal to the cost of any specified work being carried out by a person other than a defined authority following a competitive tendering process where—
- (a) no defined authority submitted a bid to carry out that work; and

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- (b) that work had previously been carried out by the defined authority conducting that process or by a predecessor of that authority;
- G = an amount equal to the cost of specified work carried out by a defined authority which is funded from a school's devolved budget allocated under a local authority's devolved school management scheme; and
- H = until 1st April 1999, an amount equal to the cost of specified work which is being carried out by a defined authority in connection with functional work falling within housing management where that functional work is not subject to section 6 of the Act.
2. Where an amount is counted towards any such cost or amount as is specified in component A, B, D, E, F, G, or H in paragraph 1(b) above—
- (a) that amount may not be counted towards any other cost or amount in any such component; and
- (b) that amount may not be counted towards any cost or amount in any component in paragraph 1(b) of Schedule 1, 2, 3 or 4 to these Regulations.

SCHEDULE 6

Regulation 3

APPLICATION OF SECTION 6 – MANAGEMENT OF VEHICLES

<i>Column 1</i> <i>Defined authority</i>	<i>Column 2</i> <i>Relevant date</i>
Aberdeen City Council	1st January 1998
Aberdeenshire Council	1st September 1997
Angus Council	1st July 1997
Argyll and Bute Council	1st July 1997
East Ayrshire Council	1st November 1997
North Ayrshire Council	1st January 1998
South Ayrshire Council	1st January 1998
Clackmannanshire Council	1st March 1998
Dumfries and Galloway Council	1st November 1997
East Dunbartonshire Council	1st July 1997
West Dunbartonshire Council	1st November 1997
Dundee City Council	1st September 1997
City of Edinburgh Council	1st May 1998
Falkirk Council	1st March 1998
Fife Council	1st November 1997
Glasgow City Council	1st November 1997
Highland Council	1st January 1998
Inverclyde Council	1st November 1997

<i>Column 1</i>	<i>Column 2</i>
<i>Defined authority</i>	<i>Relevant date</i>
North Lanarkshire Council	1st October 1997
South Lanarkshire Council	1st October 1997
East Lothian Council	1st May 1998
Midlothian Council	1st May 1998
West Lothian Council	1st May 1998
Moray Council	1st May 1998
Orkney Islands Council	1st July 1997
Perth and Kinross Council	1st January 1998
East Renfrewshire Council	1st March 1998
Renfrewshire Council	1st May 1998
Scottish Borders Council	1st January 1998
Shetland Islands Council	1st July 1997
Stirling Council	1st July 1998
Western Isles Council	1st July 1997
A Joint Board	1st July 1998
A Joint Committee	1st July 1998

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision as to the introduction in Scotland of compulsory competitive tendering under the Local Government Act 1988 in respect of management of vehicles, housing management, security work, and the following professional services:— legal, construction and property, financial, information technology and personnel.

The dates for introduction are set down and formulae are provided for the calculation of the specified proportion of work which must be exposed to competition. The Regulations apply to all local authorities, joint boards and joint committees in Scotland, other than joint police boards and individual local authorities whilst acting as police authorities.