
STATUTORY INSTRUMENTS

1997 No. 198 (S.13)

LOCAL GOVERNMENT, SCOTLAND

The Local Government Act 1988 (Defined Activities) (Exemptions) (Scotland) Order 1997

Made - - - - *31st January 1997*
Laid before Parliament *3rd February 1997*
Coming into force - - *3rd March 1997*

The Secretary of State, in exercise of the powers conferred on him by sections 2(9) and 15(5) 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 application

1.—(1) This Order may be cited as the Local Government Act 1988 (Defined Activities) (Exemptions) (Scotland) Order 1997 and shall come into force on 3rd March 1997.

(2) This Order applies to an activity if carried out by a defined authority specified in section 1(1) of the Act which has functions in Scotland.

Interpretation

2.—(1) In this Order—

“the Act” means the Local Government Act 1988;

“specified activity” means (subject to paragraph (2) below) a defined activity listed in section 2(2)(a), (b), (c), (d), (e), (ee), (f), (g), (gg) or (i) of the Act(2).

(2) For the purposes of article 3 below, the defined activity listed in paragraph (b) of section 2(2) of the Act shall exclude—

(a) work falling within that paragraph which is carried out by the Dumfries and Galloway Council or the Fife Council; and

(1) 1988 c. 9; section 15(5) was amended by the Local Government etc. (Scotland) Act 1994 (c. 39), Schedule 13, paragraph 156(4); see section 1(1) of the 1988 Act for the meaning of “defined authority”.

(2) On section 2(2)(b) of the Act see the amendment to Schedule 1 to the Act by article 3(1) of the Local Government Act 1988 (Competition) (Defined Activities) Order 1995 (S.I.1995/1915); section 2(2) (ee) was added by the Local Government Act 1988 (Competition) (Defined Activities) (Managing Sports and Leisure Facilities) Order 1989 (S.I. 1989/2488) and section 2(2)(gg) and (i) was added by the Local Government Act 1988 (Competition) (Defined Activities) Order 1994 (S.I. 1994/2884).

- (b) work falling within that paragraph by reason only of article 3(1) of the Local Government Act 1988 (Competition) (Defined Activities) Order 1995⁽³⁾ which is carried out by a joint board.

Financial exemptions

3.—(1) A specified activity shall not be treated as a defined activity so long as the condition mentioned in paragraph (2) below is fulfilled.

(2) The condition is that the amount estimated by the authority as the gross cost of carrying out the activity in question through their direct labour organisation or a similar organisation in the immediately preceding financial year does not exceed £100,000.

(3) For the purposes of this article, the cost of carrying out any activity shall—

- (a) include such proportion of the authority's administrative expenses, other than expenses that would be incurred by the authority whether the activity were carried out by it or by another person, as is properly attributable to the carrying out of the activity;
- (b) exclude the cost of any work which is treated as carried out by the authority by virtue of section 3(4) of the Act; and
- (c) exclude the cost of any work which, by virtue of an order made under section 2(9) of the Act (other than by paragraph (1) above), is not treated as a defined activity.

4.—(1) The defined activity listed in section 2(2)(b) of the Act shall not be treated as a defined activity where carried out by the Dumfries and Galloway Council or the Fife Council so long as the condition mentioned in paragraph (2) below is fulfilled.

(2) The condition is that the amount estimated by the authority as the gross cost of carrying out the activity through their direct labour organisation or a similar organisation in the immediately preceding financial year does not exceed £225,000.

(3) For the purposes of this article, the cost of carrying out the activity shall—

- (a) include such proportion of the authority's administrative expenses, other than expenses that would be incurred by the authority whether the activity were carried out by it or by another person, as is properly attributable to the carrying out of the activity;
- (b) exclude the cost of any work which is treated as carried out by the authority by virtue of section 3(4) of the Act; and
- (c) exclude the cost of any work which, by virtue of an order made under section 2(9) of the Act (other than by paragraph (1) above), is not treated as a defined activity.

Exemption – housing management

5. The defined activity listed in section 2(2)(h) of the Act⁽⁴⁾ shall not be treated as a defined activity so long as it is carried out by an authority which holds, under Part I of the Housing (Scotland) Act 1987⁽⁵⁾, no more than 2,500 houses (excluding hostels as defined in section 2(5) of that Act).

Exemption – employees' accommodation

6. None of the specified activities shall be treated as a defined activity so long as it constitutes work carried out through an employee who is required as a condition of his employment to live in

(3) S.I. 1995/1915.

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

(5) 1987 c. 26.

particular accommodation for the better performance of his duties and the work forms part of his duties.

Exemption – fire services arrangements and equipment

7. The provision of information technology services shall not be treated as a defined activity so long as those services are provided for the following purposes of a fire authority (within the meaning given by section 38(1) of the Fire Services Act 1947⁽⁶⁾):–

- (a) enabling the authority to secure arrangements such as are mentioned in–
 - (i) section 1(1)(c) and (d) of that Act (calls for assistance and obtaining information);
 - (ii) section 3(1)(e) of that Act (non-firefighting services); or
- (b) any system of wireless telegraphy operated or to be operated by a fire brigade.

Exemption – repair and maintenance of fire service vehicles

8. The repair or maintenance of a motor vehicle or trailer shall not be treated as a defined activity where the motor or trailer is one which is used only for the discharge of a fire service function.

Exemption – certain training arrangements

9.—(1) Work shall not be treated as a defined activity so long as the work is carried out for the purposes of the provision (by a local authority acting jointly with any other person) of training in social work by way of a course approved or promoted by, or other training promoted by, the Council in accordance with section 10 of the 1983 Act.

(2) In this article–

“the 1983 Act” means the Health and Social Services and Social Security Adjudications Act 1983⁽⁷⁾;

“the Council” means the Central Council for Education and Training in Social Work, continued in being by section 10 of the 1983 Act;

“social work” means any social work in relation to which the Council has functions by virtue of section 10 of the 1983 Act; and

“work” means personnel services.

Works contract exemption

10.—(1) The activities listed in section 2(2)(j) to (n) of the Act⁽⁸⁾ shall not be treated as defined activities so long as they consist of work undertaken by a defined authority for another party (other than a joint police board) under a works contract and the gross annual cost of that work under that contract does not exceed £25,000.

(2) In paragraph (1) above–

“gross annual cost” means the estimated total annual costs including overheads; and

“joint police board” means a joint board constituted by an amalgamation scheme made or approved under the Police (Scotland) Act 1967⁽⁹⁾.

(6) 1947 c. 41, to which there are no relevant amendments.

(7) 1983 c. 41.

(8) Section 2(2)(j) of the Act was added by the Local Government Act 1988 (Competition) (Defined Activities) Order 1994 (S.I. 1994/2884); section 2(2)(k) was added by the Local Government Act 1988 (Competition) (Defined Activities) (Construction and Property Services) Order 1994 (S.I. 1994/2888); and section 2(2)(l), (m) and (n) was added by the Local Government Act 1988 (Competition) (Defined Activities) Order 1995 (S.I. 1995/1915).

(9) 1967 c. 77.

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

Revocations

11. The Local Government Act 1988 (Defined Activities) (Exemptions) (Scotland) Order 1988(**10**) and the Local Government Act 1988 (Defined Activities) (Exemptions) (Scotland) Amendment Order 1990(**11**) are revoked.

St Andrew's House,
Edinburgh
31st January 1997

George Kynoch
Parliamentary Under Secretary of State, Scottish
Office

(10) S.I. 1988/1415.
(11) S.I. 1990/1485.

EXPLANATORY NOTE

(This note is not part of the Order)

Part I of the Local Government Act 1988 precludes a defined authority within the meaning of section 1 of that Act from entering into a works contract or carrying out functional work (or such a proportion of functional work as the Secretary of State may specify) in respect of work falling within an activity listed in section 2(2) of that Act (a defined activity) unless they have competed for the contract or subjected the work to competition. “Works contract” and “functional work” are defined in section 3 of that Act.

This Order specifies six situations in which, in Scotland, work will not be treated as falling within a defined activity for the purposes of that Act.

The first exemption applies where the estimated gross cost to a particular authority of carrying out certain activities in the preceding financial year does not exceed a specified sum. For the majority of activities to which the Order applies (“specified activities” in terms of article 2), that sum is £100,000 (article 3). For building cleaning by Dumfries and Galloway and Fife Councils the sum is £225,000 (article 4). A similar exemption applies to housing management, expressed as a level of housing stock of 2,500 or less (article 5).

The second exemption applies to specified activities where work is carried out by an employee of the defined authority who is required to live in particular accommodation for the better performance of his duties (article 6). The third exemption relates to the provision of certain information technology services for fire purposes (article 7). The fourth exemption relates to the repair and maintenance of fire service vehicles (article 8). The fifth exemption relates to training in social work by way of a course approved or promoted by, or other training promoted by, the Central Council for Education and Training in Social Work, in accordance with section 10 of the Health and Social Services and Social Security Adjudications Act 1983 (article 9).

The sixth exemption allows works contracts of value below £25,000 to be exempt where the work concerned relates to legal, construction and property, financial, IT or personnel services (article 10).