



THE SCOTTISH OFFICE

Environment Department

New St. Andrew's House  
Edinburgh EH1 3SZ

4710

To the attached addressees

Telephone 031-244  
Fax 031-244 4785

19 May 1995

Dear Sir/Madam

**SECTION 55 OF THE LOCAL GOVERNMENT ETC (SCOTLAND) ACT 1994**

1. In the course of the Parliamentary passage of the Local Government etc (Scotland) Act 1994, Ministers indicated that they would consult interested parties before setting the date or dates after which existing local authorities must gain the agreement of their successors before committing themselves to major financial transactions. Accordingly, this letter invites comments on the date or dates which the Secretary of State should designate for the purposes of section 55 of the 1994 Act. Comments should be sent to the undermentioned by **16 June 1995**:

Mrs Virginia Holt  
The Scottish Office  
Environment Department  
Local Government Division  
Room 6/85  
New St Andrew's House  
EDINBURGH  
EH1 3TG

2. Section 55 of the 1994 Act is reproduced at Annex A. In essence, this empowers the Secretary of State to determine the date or dates from which existing authorities (as defined in section 55(12)) are required to obtain the consent of:

2.1 the relevant successor body where they intend to dispose of land or other property for a consideration exceeding £250,000;

2.2 all of their successor bodies where they intend to:

- enter into a capital contract where the liability exceeds £2.5m; or

- enter into any other contract with a value exceeding £250,000 where the period of the contract either extends beyond 31 March 1996 or is capable of being so extended (eg a contract of £84,000 per annum for 3 years)

**2.3 but excluding matters relating to land or houses covered by section 55(10).**

3. Section 55(3) indicates that the Secretary of State may determine different dates as between different successor authorities.

4. The underlying purpose of section 55 is clear, namely to ensure agreement between existing authorities and their successors on major financial transactions which are likely to have an ongoing effect on the successor body. However, in determining the date or dates from which such agreement must be secured, a number of considerations need to be balanced. In particular, the legitimate interests of the new authorities must be balanced against the need to minimise disruption to existing services. It is important that the date adopted provide time for successor bodies to become sufficiently established so that they are able to respond expeditiously to proposals put to them by existing authorities. In considering the dates proposed in the following paragraph, new councils will wish to reflect fully on that aspect. It is also important that existing authorities have warning of the need to allow time to gain the agreement of their successors to any contracts which require to be let after the relevant date.

5. Having considered these various issues and on the assumption that new authorities should be able to respond to any consultation by existing authorities on average within 4 weeks, the Secretary of State is proposing that:

5.1 all existing local authorities should be required from **1 August 1995** to have the agreement of their successor local authorities to all transactions outlined in paragraph 2 relating to any local authority functions other than those dealt with below;

5.2 all existing local authorities, including islands authorities and the Central Scotland Water Development Board, should be required from **1 August 1995** to have the agreement of the relevant new water and sewerage authority to all transactions outlined in paragraph 2 relating to the functions which will be transferring to those bodies;

5.3 Grampian, Tayside, Central and Strathclyde Regions, the Lothian and Borders Police Board, the Lothian and Borders Joint Fire Board, the Northern Joint Police Committee and the Highland and Islands Joint Fire Board should be required, from **14 days after the relevant police amalgamation or fire administration scheme comes into force**, to have the agreement of the relevant successor joint board to all transactions outlined in paragraph 2 relating to police or fire functions;

5.4 all existing local authorities should be required, from **1 August 1995**, to have agreement of the Secretary of State to all transactions outlined in paragraph 2 relating

to any road or proposed road which the Secretary of State has given notice will become a trunk road.

6. The above dates have been proposed on the assumption that, meanwhile, there will be a considerable degree of co-operation and consultation between existing authorities and their successors. The Secretary of State has made it clear, however, that if it becomes evident that this co-operation and consultation is not taking place, he will not hesitate to bring forward the relevant dates.

7. The Department may wish to make public the responses it receives to this consultation. If you would like your response to be treated as confidential please make this clear. Confidential responses may nevertheless be included in any published statistical summary of numbers of comments received and views expressed.

Yours faithfully

A handwritten signature in cursive script, appearing to read 'G M Thomson'.

G M THOMSON

**CONSULTATION ON SECTION 55 OF THE LOCAL GOVERNMENT ETC  
(SCOTLAND) ACT 1994**

Distribution List

The Chief Executives of Regional, Islands and District Councils  
The Interim Clerk/Chief Executives of "Shadow" Local Authorities  
Royal Institution of Chartered Surveyors in Scotland  
CIPFA  
Commission for Local Authority Accounts in Scotland  
COSLA  
Central Scotland Water Development Board  
Scottish Local Government Information Unit  
Scottish Children's Reporter Administration  
Lothian and Borders Police Board  
Northern Joint Police Committee  
Highlands and Islands Fire Board  
Lothian and Borders Fire Board  
East of Scotland Water Authority  
West of Scotland Water Authority  
North of Scotland Water Authority  
Scottish Assessors' Association  
The Law Society of Scotland  
Other Government Departments (including Chief Valuers' Office)

Restriction on disposal of assets and entering into contracts by existing authorities.

55.—(1) On and after the relevant date, an existing authority shall not, without the consent of the relevant successor authority or, in a case to which subsection (9) below applies, the Secretary of State—

- (a) without prejudice to section 74 of the 1973 Act (disposal of land), dispose of any land for a consideration exceeding £250,000; or
- (b) enter into any of the contracts mentioned in subsection (2) below.

(2) The contracts referred to in subsection (1)(b) above are—

(a) contracts—

(i) in terms of which the authority incurs a liability to meet capital expenses within the meaning of section 94 of the 1973 Act (capital expenses); and

(ii) where the consideration exceeds £2,500,000; and

(b) contracts, other than contracts such as are mentioned in subparagraph (a)(i) above—

(i) the period of which purports to extend beyond 31st March 1996 or is capable of being so extended; and

(ii) where the consideration exceeds £250,000.

(3) The relevant date for the purposes of this section is such date as the Secretary of State may by order made by statutory instrument determine; and different such dates may be so determined in respect of any of the successor authorities mentioned in subsections (4) to (8) below or, in a case to which subsection (9) below applies, the Secretary of State.

(4) Subject to subsections (5) to (8) below, the relevant successor authority in relation to any proposed disposal or contract by a regional or district council is—

(a) in relation to any disposal of land, the new local authority within whose area the land will be situated; and

(b) in relation to any other contracts, any new local authority whose area will include the whole or any part of the area of the existing local authority.

(5) The relevant successor authority in relation to any proposed disposal of relevant property (within the meaning assigned by paragraph (b) of section 91(1) of this Act) or proposed contract in so far as it relates to functions mentioned in that paragraph is, in the case of—

(a) Lothian, Borders, Fife or Central Region, the East of Scotland Water Authority;

(b) Strathclyde or Dumfries and Galloway Region, the West of Scotland Water Authority; and

(c) Tayside, Highland or Grampian Region or an Islands Area, the North of Scotland Water Authority.

(6) The relevant successor authority in relation to any proposed disposal or contract by the Central Scotland Water Development Board is the East of Scotland Water Authority.

(7) The relevant successor authority in relation to any proposed disposal or contract by a police authority or, where an amalgamation scheme has been made, a joint committee for any existing police area is—

(a) in the case of each of Fife and Dumfries and Galloway, the police authority for the new police area of the same name; and

- (b) in the case of each of the police authorities or, as the case may be, joint committees for the areas or combined areas shown in brackets in the first column of the Table in section 21B(3) of the Police (Scotland) Act 1967 (reorganisation of police areas), the joint board for the corresponding combined area shown in that column. 1967 c. 77.

(8) The relevant successor authority in relation to any proposed disposal or contract by a fire authority or, where an administration scheme has been made, a joint committee, is—

- (a) in the case of each of Fife and Dumfries and Galloway, the fire authority for the new area of the same name; and
- (b) in the case of each of the fire authorities or, as the case may be, joint committees for the areas or combined areas shown in brackets in the first column of the Table in section 147(4) of the 1973 Act (fire services), the joint board for the corresponding combined area shown in that column.

(9) Where—

- (a) a disposal of land such as is mentioned in subsection (1)(a) above is of land held or acquired by the authority for the construction or improvement of any road; or
- (b) a contract such as is mentioned in subsection (2) above is for works for the construction or improvement of any road; and
- (c) where, in either case, the Secretary of State has given notice to the authority concerned of his intention to make an order under section 12A(1)(a), 12B(1)(a), 12C(1)(b), 12E(1) or 12E(3) of the Roads (Scotland) Act 1984 directing that a road or proposed road should become a trunk road or that he should be authorised to provide a special road, 1984 c. 54.

the consent required shall, in either case, be that of the Secretary of State.

(10) The requirement to seek consent imposed by this section shall not apply to—

- (a) any disposal of land in respect of which the consent of the Secretary of State is required under section 12(7) of the Housing (Scotland) Act 1987; and 1987 c. 26.
- (b) any contract entered into by an existing authority in or in connection with the exercise of the power conferred on them by section 24 of the Local Government Act 1988 (power to provide financial assistance for privately let housing accommodation). 1988 c. 9.

(11) This section applies to any granting of an option to require an existing authority to make a disposal of land or enter into a contract which would require the consent of a successor authority or the Secretary of State as it applies to such a disposal or contract.

(12) In this section “existing authority” means a regional or district council, the Central Scotland Water Development Board, any police authority or joint committee for a police force established under the Police (Scotland) Act 1967, any fire authority or joint committee for a fire brigade established in Scotland under the Fire Services Act 1947 and, for the purposes of the matters mentioned in subsection (5) above, includes an islands council.