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Circular No 13/1995

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New Town Development Corporations  
Clerk to the Lothian and Borders Fire Board  
Clerk to the Lothian and Borders Police Board  
Clerk to the Highlands and Islands Fire Board  
Clerk to the Northern Joint Police Committee  
Clerk to the Central Scotland Water Development Board

Our ref: LOE/1/24

21 June 1995

Dear Sir or Madam

**THE LOCAL GOVERNMENT (EXEMPTION FROM COMPETITION)  
(SCOTLAND) ORDER 1995: SI NO 678  
THE LOCAL GOVERNMENT, PLANNING AND LAND ACT 1980  
(COMPETITION) (SCOTLAND) REGULATIONS 1995: SI No 677**

INTRODUCTION

1. Paul Rhodes wrote to you on 7 April enclosing copies of these Statutory Instruments. The purpose of this circular is to give guidance on these provisions.
2. As authorities are aware, Ministers have concluded that the specific circumstances of reorganisation warrant the general suspension of the tendering requirements of CCT. However, Ministers do, of course, still expect authorities to obtain value for money when arranging for the delivery of services and do not wish the exempt period to be used to increase in-house capacity. The CCT accounting provisions, which apply when work is carried out in-house, remain in place: further details are outlined below.
3. When making contracts for the supply of goods or materials or for the execution of works, authorities will wish to bear in mind the standing orders they will have made under section 81 of the Local Government (Scotland) Act 1973. Authorities will also wish to bear



in mind the terms of any other standing orders they may have made under section 81 in relation to other types of contracts.

4. If a contract with an outside supplier contains an extension clause then this may be exercised in the normal way. If the contract has no extension clause then, while authorities would be advised to seek legal opinion, it is likely that where the EC Procurement Directives apply extension of an existing contract with an outside supplier may not be allowed. In these circumstances an authority may decide to carry out a tendering exercise in accordance with the Procurement Directives. As with other work terminating within the exempt period, a tendering exercise under CCT rules would not be required. However, if the exercise did not comply with CCT rules and the work was awarded in-house then the Secretary of State considers that re-tendering would be required at the end of the exempt period. As such, authorities may, in these circumstances, wish to consider carrying out an exercise under CCT rules.

## 1988 ACT WORK

### THE LOCAL GOVERNMENT (EXEMPTION FROM COMPETITION) (SCOTLAND) ORDER 1995

#### Effect of the Order

5. The Order removes certain of the obligations on local authorities under the Local Government Act 1988. A briefing note on the Order is attached at Annex A.

6. The effect is to remove the requirement on local authorities to seek competitive tenders under CCT rules for work falling due within the exempt period. The exempt period commenced on 31 March 1995 and terminates at different times for different authorities and different services, as detailed in Schedule 2 to the Order. By virtue of and subject to article 8 of the Order, the exempt period is continued for functional work until the date work actually starts. Authorities will wish to note that where work was let under CCT and continues to comply with the 6 conditions contained in section 7 of the Act, then this work may be put out to re-tender when the contract/agreement expires if this date is later than the exemption end date.

7. Where an in-house agreement expires on or after the commencement of the exempt period and before the exemption end date, the authority will not be required to subject this work to CCT. However, when an agreement expires during this period and the authority still wishes to carry out the work in-house an authority must, by virtue of paragraph 5 of Schedule 1 to the Order, prepare a detailed specification and prepare a bid in terms of section 7(6) of the 1988 Act, for a period not extending beyond the end of the exempt period. A detailed specification will also be required where work falls anew or for the first time within a defined activity or where the authority proposes to carry out the activity in such a way that it varies from the specification to an extent which would constitute a breach of the sixth condition had section 6 of the 1988 Act applied.

8. Where an in-house agreement expires and an authority intend to carry out the work according to the specifications previously used, these may be utilised along with provision

for periodic uprating of sums properly charged to the account. Such uprating must be based on a reasonable standard indicator. Paragraph 26 of The Scottish Office Environment Department Circular 13/93 advises generally that any index linked price review provisions chosen should be appropriate for the particular work in question.

9. When in-house agreements terminate during the exempt period, authorities may, of course, wish to externalise the work or to carry out a tendering exercise. If authorities decide to carry out a voluntary tendering exercise during the exempt period, they may wish to comply with the usual CCT requirements so that, if the work is won in-house, re-tendering will not be required when the exempt period comes to an end.

10. Article 4 confirms that nothing in the Order constitutes authority for contracts with outside contractors to be prematurely terminated.

#### Financial Requirements

11. The requirement to keep accounts in terms of section 9 of the 1988 Act will continue during the exempt period. In addition, authorities will still be required to meet the financial objectives set in terms of section 10 and to provide an annual report in terms of section 11. Paragraph 8 of Schedule 1 to the Order amends section 11(7) of the 1988 Act in effect giving new local authorities an additional 3 months to prepare the DSO annual report for financial year 1995-96.

12. The accounts relate to the defined activity. All work of that description which is carried out in-house will continue to feature in them, whether an existing agreement straddles the exempt period, is extended by virtue of the exempt period or a wholly new agreement is necessary.

#### Exercise of the Secretary of State's Sanction Powers

13. In relation to failure to carry out work in accordance with the specifications, failure to meet financial objectives and a failure to provide an annual report, sanction powers under sections 13 and 14 of the Local Government Act 1988 are preserved. In addition, article 6 of the Order provides that directions served on existing authorities in relation to anti-competitive behaviour continue to have effect after 31 March 1995 and that notices and directions may be served after that date in respect of the CCT obligations of an authority up to 31 March 1995.

#### Reintroduction of Competition

14. As indicated in our letter of 27 January about CCT and reorganisation, authorities have until 1 June 1996 to make representations to the Department about possible changes to the dates laid down for individual services.

## 1980 ACT WORK

### THE LOCAL GOVERNMENT, PLANNING AND LAND ACT 1980 (COMPETITION) (SCOTLAND) REGULATIONS 1995

#### Effect of the Order

15. As the terms of the Local Government, Planning and Land Act 1980 are different to those of the Local Government Act 1988, these regulations differ significantly from the Local Government (Exemption from Competition) (Scotland) Order 1995. The purpose is, however, similar. A briefing note on these regulations (which also apply to development corporations) is attached at Annex B.

16. These regulations replace as of 31 March 1995 the Local Government (Direct Labour Organisations) (Competition) (Scotland) Regulations 1990, as amended by the Local Government (Direct Labour Organisations) (Competition) (Scotland) Amendment Regulations 1991. The effect is to remove the requirements on local authorities to seek competitive tenders for work falling due within the exempt period (except as outlined in paragraph 17 below). The exempt period commences on 31 March 1995 and will be terminated on 1 July 1997 by the implementation of further regulations substantially enacting those of 1990 as amended. The exemption end date for 1980 Act activities, unlike for 1988 Act activities, refers to the actual commencement of work.

17. The Regulations change the description of functional work which in terms of section 9(3)(a) of the Act must be subjected to tender so as to exclude all activities covered by the 1980 Act with the exception of works of construction where the estimated cost of the job exceeds £500,000. The term "works of construction" is defined in regulation 2.

18. The figure of £500,000 is also used as the prescribed amount as set out in section 7(1) of the 1980 Act. This means that local authorities may not enter into works contracts above this level unless they do so as the result of the acceptance of a tender. This works contract restriction is again applicable only to works of construction.

19. The accounting requirements relating to construction and maintenance work (section 10 of the 1980 Act) and related provisions in sections 11 to 16 and 18 of the 1980 Act are preserved. A local authority will therefore be required to keep accounts, to report annually to the Secretary of State and to meet such financial objective as the Secretary of State may direct.

20. The Secretary of State's sanction powers under sections 19A and 19B of the 1980 Act are preserved.

21. Regulation 9 continues the requirement to draw up detailed specifications for works as if section 9(4)(a) of the 1980 Act had applied to that work and requires that this detailed specification is consistent with the statement which they are required to prepare under section 9(2) of the Act. This places 1980 Act works in an analogous position to 1988 Act work in relation to the expiry of agreements within the exempt period and changes to specifications prior or as a consequence of reorganisation.

Conclusion

22. Any enquiries on this Circular should be addressed to me at The Scottish Office Environment Department, Room 6/104, New St Andrew's House, Edinburgh, EH1 3TG phone: 0131 244 4058, fax: 0131 244 4580.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Simon Stockwell', with a long horizontal flourish extending to the right.

SIMON STOCKWELL

**BRIEFING NOTE****THE LOCAL GOVERNMENT (EXEMPTION FROM COMPETITION) (SCOTLAND) ORDER 1995 (SI 1995/678)**

This Order was made under sections 2(10) and 15(5) and (7) of the 1988 Act. Section 2(10) is a new transitional power inserted into the 1988 Act by paragraph 156(3) of Schedule 13 to the Local Government etc (Scotland) Act 1994.

**Article 1**

This article is self-explanatory.

**Article 2**

This article provides a number of definitions required for the Order, makes clear the references to the 1988 Act are to that Act as enacted at 31 March 1995 and outlines the defined activities to which the Order applies.

**Article 3**

This provides that Part I of the 1988 Act shall be modified, from 31 March 1995 to 31 December 2000, in its application to Scottish local authorities (including joint boards and joint committees) by the modifications contained in schedule 1 to the Order.

**Article 4**

This provides that nothing in the Order shall affect any contract held out-house and, in particular, that nothing in the Order shall entitle a local authority to terminate or vary such a contract before it is due to expire.

**Article 5**

This provides that the modifications to section 11 specified at paragraph 9 of schedule 1 shall only have effect in respect of financial year 1995/1996 onwards. The modifications specified at paragraph 9 are designed to preserve the DLO/DSO accounting requirements when the tendering requirements are suspended. As the tendering requirements were in operation in 1994/1995, there is no need to make the modifications for the operation of section 11 in respect of that year.

**Article 6**

This confirms that the Order does not affect obligations arising under Part I of the Act up to and including financial year 1994/1995. It also confirms that authorities must comply with directions under section 14 of the Act, irrespective of the date on which they are served.

**Article 7**

Article 7(1) provides details of the respective exemption end dates in Schedule 2 for new unitary authorities. Article 7(2) provides that for joint committees or joint boards the exemption end date for all activities shall be 1 July 1998.

**Article 8**

Article 8(1) provides that for functional work the exempt period shall continue until work actually starts dependant upon regulation 3 of the Local Government (Direct Service Organisations) Regulation 1993 (SI 1993/848) which provides that work shall begin not less than 30 days and not more than 120 days after the announcement of the decision as to who should carry out the work. Article 8(2) provides that the exemption end date shall only continue until work actually starts if the announcement of the decision by the authority as to who should carry out the work is made on a date prior to the exemption end date.

**Schedule 1**

As indicated in the commentary on Article 3, this provides for modifications to Part I of the 1988 Act from 31 March 1995 to 31 December 2000.

**Paragraph 1**

This lays down a number of definitions.

**Paragraph 2**

This changes the date of 1 April 1989 contained in section 4(7) of the Act to "the exemption end date".

**Paragraph 3**

This ensures that any authorities who entered into works contracts during the exempt period will cease to have the power to carry them out if such contracts would have infringed the requirements of section 4.

**Paragraph 4**

Section 6(5) of the Act provides that section 6 applies to work begun before the specified date but also provides that section 6 shall not apply before the specified date. In other words, if work is begun before section 6 applies it must comply with section 6 once the specified date is reached. The modification made by paragraph 4 make the specified date "the exemption end date" and also provide that section 6 shall not apply during the exemption period.

**Paragraph 5**

This paragraph deals with when a contract with an outside contractor expires, or where a DLO/DSO agreement expires or where the specification are varied or where new work appears. If an authority wishes to carry out such work in-house (or continue to carry it out in-house), the paragraph provides that the authority must prepare a detailed specification and bid (not extending beyond the exempt period).

**Paragraph 6**

This paragraph modifies section 9 to ensure its continued application so that DLO/DSO accounts are kept for all work falling with a CCT defined activity.

**Paragraph 7**

This paragraph modifies section 10 to ensure that the financial objectives continue to apply to all work falling with a CCT defined activity.

**Paragraph 8**

This modifies section 11 so that for financial year 1995/1996 authorities have until 31 December 1996 to prepare the report and until 31 January 1997 to send a copy of the report to the Secretary of State and to their auditor.

**Paragraph 9**

This modifies section 11 to ensure the continued application of the report provisions to all work carried out within a CCT defined activity.

**BRIEFING NOTE****THE LOCAL GOVERNMENT, PLANNING AND LAND ACT 1980 (COMPETITION)  
(SCOTLAND) REGULATIONS 1995 (SI 1995/677)**

These regulations vary the descriptions of work to which section 9(3) of the Act applies. They also vary the prescribed amount in respect of works contracts for the purposes of section 7(1). Authorities will wish to note that section 9(2) of the Act continues to apply to all functional work.

**Regulation 1**

This regulation is self-explanatory

**Regulation 2**

This lays down a number of definitions. In the main, these are the same as definitions laid down in previous regulations.

**Regulation 3**

This lays down a prescribed amount of £500,000 in respect of a works contract for the purposes of section 7(1). Before entering into a works contract exceeding this amount, the authority must ensure that the provisions of section 7(3) of the 1980 Act have been complied with.

**Regulation 4**

This lays down that when establishing if the value of a works contract exceeds £500,000 regard should only be had to the value attributable to works of construction. "Works of construction" is defined in regulation 2.

**Regulation 5**

This lays down that when establishing whether the value of a works contract exceeds £500,000 the value of any other contract made with the preceding 6 months for work of similar description on the same site or surface or on an adjacent site or surface shall be included.

**Regulation 6**

This exempts works contracts exceeding £500,000 if they are contracts for the carrying out of emergency work. "Emergency work" is defined in regulation 2.

**Regulation 7**

This provides that authorities or development corporations may not carry out in-house functional work involving works of construction where the estimated cost attributable to

works of construction exceeds £500,000, without complying with the conditions specified in section 9(4).

### **Regulation 8**

This exempts emergency work from the provisions of regulation 7.

### **Regulation 9**

This requires authorities and development corporations, if they propose to carry out functional work in-house, to draw up a detailed specification and to ensure that the statement required under section 9(2) is consistent with this specification.

Regulation 9(3) and (4) exempts the following categories of work from the provision of regulation 9(1) and (2):-

- Works of construction exceeding £500,000 (because such work has to comply with the full requirements of CCT in terms of regulation 7);
- emergency work;
- highways work not exceeding £25,000 up to the limit of 40% of the aggregate value of all relevant highway work carried out in the immediately preceding financial year (this is the equivalent of the roads competition free allowance contained in the previous regulations);
- general water and sewerage works not exceeding £50,000 (again, this is equivalent to an exemption contained in the previous regulations);
- the gritting of or the clearing of snow from highways (again, an exemption for this was contained in the previous regulations);
- until its expiry, functional work which complied with CCT before 31 March 1995.

### **Regulation 10**

This revokes previous regulations.