
STATUTORY INSTRUMENTS

1996 No. 739 (S.72)

LOCAL GOVERNMENT, SCOTLAND

The Local Government (Transitional and Consequential Provisions and Revocations) (Scotland) Order 1996

<i>Made</i>	- - - -	<i>11th March 1996</i>
<i>Laid before Parliament</i>		<i>11th March 1996</i>
<i>Coming into force</i>	- -	<i>1st April 1996</i>

The Secretary of State, in exercise of the powers conferred on him by section 181(1) and (2) of the Local Government etc. (Scotland) Act 1994⁽¹⁾ and of all other powers enabling him in that behalf, hereby makes the following Order:

Citation and commencement

1. This Order may be cited as the Local Government (Transitional and Consequential Provisions and Revocations) (Scotland) Order 1996 and shall come into force on 1st April 1996.

District courts—fixed penalties and conditional offers

2. Any reference to a clerk of a district court in—

- (a) any fixed penalty notice as mentioned in section 52(1) of the Road Traffic Offenders Act 1988⁽²⁾ made before 1st April 1996;
- (b) any conditional offer as mentioned in section 75(4) of that Act made before 1st April 1996;
or
- (c) any conditional offer as mentioned in section 56(1) of the Criminal Justice (Scotland) Act 1987⁽³⁾ made before 1st April 1996,

shall be construed, for all purposes, on and after that date as a reference to the clerk of the district court for the commission area in which there is situated the court originally referred to in that notice or, as the case may be, offer and any such notice or offer shall, on or after that date, have effect accordingly.

(1) 1994 c. 39.
(2) 1988 c. 53.
(3) 1987 c. 41.

Continued effect of certain warrants

3. Subject to section 47 of the Local Government etc. (Scotland) Act 1994 and without prejudice to section 16 of the Interpretation Act 1978(4), any warrant or other order granted or made by a Justice of the Peace before 1st April 1996 shall have the same effect, on and after that date, as it had before that date.

Court Rota for Justices

4. Notwithstanding the terms of section 16 of the District Courts (Scotland) Act 1975(5), the duty rota of justices for a commission area shall, from 1st April 1996 until such time as the commencement of a duty rota of justices approved by the justices' committee for that commission area, be determined by the clerk of the peace for that commission area.

Planning applications by local authorities

5. Where, by virtue of the operation of section 181(3) and (4) of the Local Government etc. (Scotland) Act 1994, an application for planning permission under Part III of the Town and Country Planning (Scotland) Act 1972(6), made to the planning authority before 1st April 1996 by a regional or district council, would on and after that date fall to be determined by a planning authority which would also fall to be treated as having made that application, it shall be deemed to have been withdrawn immediately before that date.

Provision in respect of councillors for islands areas

6. For the purposes of sections 30 and 33 of the Local Government (Scotland) Act 1973(7), a councillor for the local government area of Orkney Islands, Shetland Islands or Western Isles who is elected for that area under the said Act of 1973 prior to 1st April 1996 shall be deemed to have been elected under section 5 of the Local Government etc. (Scotland) Act 1994.

Consequential amendments and repeals

7.—(1) The enactments and instruments mentioned in Schedule 1 to this Order shall have effect subject to the amendments specified therein.

(2) The enactments mentioned in Schedule 2 to this Order are hereby repealed to the extent specified in the third column of that Schedule.

Revocations

8. The Orders specified in Schedule 3 to this Order are hereby revoked.

St Andrew's House,
Edinburgh
11th March 1996

George Kynoch
Parliamentary Under Secretary of State, Scottish
Office

(4) 1978 c. 30.
(5) 1975 c. 20.
(6) 1972 c. 52.
(7) 1973 c. 65.

SCHEDULE 1

Article 7(1)

PART I

amendments of enactments

Church of Scotland (Property and Endowments) Act 1925

1.—(1) The Church of Scotland (Property and Endowments) Act 1925⁽⁸⁾ shall be amended as follows.

(2) In section 22 (burgh churches)—

(a) for subsection (2A) substitute—

“(2A) References in any scheme made under this section of this Act and in subsection (2) above to the magistrates or the town council of a burgh and to the burgh within which a burgh church is situated shall, on and after 1st April 1996, be construed as references to the council and to the council area within which that burgh church is situated.”;

(b) in subsection (3)—

- (i) for the words “of the district in which” substitute the words “in whose area”; and
- (ii) for the words “the district” substitute the word “that”;

(c) in subsection (4), for the word “districts”, substitute the word “areas”; and

(d) after subsection (6) add—

“(7) In this section, except in subsection (6), “council” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994.”.

(3) In section 26 (parish churches, manses, glebes and churchyards), for the words “district councils”, substitute the words “councils (constituted under section 2 of the Local Government etc. (Scotland) Act 1994)”.

(4) In section 32 (transfer of parish churchyards)—

(a) in subsection (1) before the word “: Provided” where it first occurs, insert the words—

“and shall on 1st April 1996 and without the necessity for further conveyance be transferred to and vested in the council within whose area that churchyard is situated, subject to the provisions aftermentioned”;

(b) the words “islands or district”, except where they first occur in subsection (1), shall cease to have effect;

(c) in subsection (5)(a) and (b) the words “, as the case may be,” shall cease to have effect; and

(d) after subsection (5) add—

“(6) In this section “council”, except where it firstly and secondly occurs in subsection (1), means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994.”.

(5) In section 33 (preservation of monuments etc., in churches and churchyards)—

(a) for the words “islands or district council”, where they first occur, substitute the words “council (constituted under section 2 of the Local Government etc. (Scotland) Act 1994)”; and

⁽⁸⁾ 1925 c. 33; sections 22, 26, 32 and 33 were amended by the Local Government (Scotland) Act 1973 (c. 65), Schedule 27, Part II, paragraphs 63, 64, 66 and 67.

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- (b) for the words “the islands or district”, where they secondly occur, substitute the word “that”.

Transport Act 1968

2. In section 9(5) of the Transport Act 1968(**9**) (powers of councils, the Authority and the Executive), for the words from “of each” to “situated”, substitute the words “constituted under section 2 of the Local Government etc.(Scotland) Act 1994 whose area (or any part of whose area) falls within the Strathclyde Passenger Transport Area”.

Local Government (Scotland) Act 1973

3.—(1) The Local Government (Scotland) Act 1973 shall be amended as follows.

(2) In sections 30 (re-election to office), 33 (validity of acts done by unqualified persons) and 36 (casual vacancies), for the words “this Act” substitute in each case the words “the Local Government etc. (Scotland) Act 1994”.

(3) In section 50G(1)(a) (local authorities to publish additional information)(**10**), the words “division or” shall cease to have effect.

Licensing (Scotland) Act 1976

4. In section 1(7)(b) of the Licensing (Scotland) Act 1976(**11**) (procedure for election of members of licensing board), for the words “subsection (3) above”, substitute the words “section 46 of the Local Government etc. (Scotland) Act 1994”.

Representation of the People Act 1983

5.—(1) The Representation of the People Act 1983(**12**) shall be amended as follows.

(2) In section 187(2)(**13**) (application of Act to certain local elections), after the word “Act”, insert the words “or the Local Government (Scotland) Act 1973”.

(3) In section 188 (Parts II and III of the Act as to local elections in Scotland), for the words “Local Government (Scotland) Act 1973”, substitute the words “Local Government etc. (Scotland) Act 1994”.

(4) In section 204(1) (general application to Scotland), in the definition of “local government Act”, for the words “Local Government (Scotland) Act 1973”, substitute the words “Local Government etc. (Scotland) Act 1994”.

(5) In Schedule 1 (Parliamentary elections rules)—

(a) in rule 10(3), for the words “district” and “districts” wherever they appear, substitute the words “local government area” and “local government areas” respectively; and

(b) in rule 25(4), for the word “districts” wherever it appears, substitute the words “local government areas”.

(6) In Schedule 3 (return and declarations as to election expenses)—

(a) in the Form of Return, after the words “district of”, insert the words “local government area of”; and

(9) 1968 c. 73; section 9(5) was amended by the Local Government (Scotland) Act 1973, Schedule 18, paragraph 1(e).

(10) Section 50G was inserted by the Local Government (Access to Information) Act 1985 (c. 43), section 2(1).

(11) 1976 c. 66; section 1 was amended by the Local Government etc. (Scotland) Act 1994 (c. 39), Schedule 13, paragraph 106(2).

(12) 1983 c. 2.

(13) Section 187(2) was amended by the Representation of the People Act 1985 (c. 50), Schedule 4, paragraph 64(b).

- (b) in the Form of Declarations(14), after the words “district of”, insert the words “local government area of”.

Representation of the People Act 1985

6. In sections 6(2A)(d) (absent vote at elections for an indefinite period) and 9(5)(d) (voting as proxy) of the Representation of the People Act 1985(15) for the word “division”, substitute in both cases the word “ward”.

Airports Act 1986

7. In section 63(8) of the Airports Act 1986(16) (airport byelaws)—
- (a) the words “and section 202(13) of the Local Government (Scotland) Act 1973” shall cease to have effect; and
 - (b) for the words “the Act of 1972 and section 203 of the Act of 1973” substitute the words “that Act and section 203 of the Local Government (Scotland) Act 1973”.

Value Added Tax Act 1994

8. In section 96(4) of the Value Added Tax Act 1994(17) (interpretation-meaning of “local authority”), for the words from “regional” to the end substitute the words “council constituted under section 2 of the Local Government etc. (Scotland) Act 1994, any two or more such councils and any joint committee or joint board within the meaning of section 235(1) of the Local Government (Scotland) Act 1973”.

PART II

amendments of instruments

The Public Charitable Collections (Scotland) Regulations 1984

9.—(1) The Public Charitable Collections (Scotland) Regulations 1984(18) shall be amended as follows.

- (2) In regulation 1(2)—
- (a) the definition of “council” shall be omitted; and
 - (b) after the definition of “house to house collection” there shall be inserted the following definition:—

““local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994;”.

(3) In each of regulations 3(2)(b), 5(d), 11(1), (5) and (6) and 13, for the word “council” wherever it occurs, there shall be substituted the words “local authority”.

(4) In regulation 13, the words “district or islands” shall be omitted.

(5) In the Schedule, for the words “DISTRICT OR ISLANDS COUNCIL”, there shall be substituted the words “LOCAL AUTHORITY”.

(14) The Form of Declarations was amended by the Representation of the People Act 1985, Schedule 4, paragraph 88.

(15) 1985 c. 50; section 6(2A)(d) was inserted by the Representation of the People Act 1990 (c. 32), section 1(b).

(16) 1986 c. 31.

(17) 1994 c. 23.

(18) S.I.1984/565, amended by S.I. 1988/1323.

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The Representation of the People (Scotland) Regulations 1986

10.—(1) The Representation of the People (Scotland) Regulations 1986(**19**) shall be amended as follows.

(2) In regulation 4 (interpretation)—

(a) for the definition of “electoral area”, there shall be substituted the following definition:—

““electoral area” means an electoral ward within the meaning of section 5 of the Local Government etc. (Scotland) Act 1994;” and

(b) after the definition of “list of overseas electors”, there shall be inserted the following definitions:—

““local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994;

“local government area” means the area of a local authority;”.

(3) In regulation 43(2) and (3) (adaptation of electors lists) for the words “returning officer”, there shall be substituted the word “council”.

(4) In regulation 50(4) (information about register) for the word “district”, there shall be substituted the words “local government area”.

(5) Regulation 51(1A)(**20**) shall be omitted.

(6) In the back of Form C in Schedule 2 (proxy paper), in paragraph 5 for the word “division”, there shall be substituted the word “area”.

The European Parliamentary Election Regulations 1986

11. In the back of the form of proxy paper in Part II of Schedule 4 to the European Parliamentary Election Regulations 1986(**21**), in paragraph 5 for the word “division” where it occurs in that part of the form for use in Scotland, there shall be substituted the word “ward”.

The Scottish Local Election Rules 1986

12.—(1) The Scottish Local Elections Rules 1986(**22**) shall be amended as follows.

(2) In rule 4(**23**)—

(a) before the definition of “local government area”, there shall be inserted the following definition:—

““local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994;” and

(b) for the definition of “local government area”, there shall be substituted the following definition:—

““local government area” means the area of a local authority;”.

(3) In the local elections rules set out in Schedule 2—

(a) in rule 14(2) for the words “regional, islands area or district council”, there shall be substituted the words “local authority”;

(19) S.I. 1986/1111, amended by S.I. 1990/629 and to which there have been other amendments which are not relevant to this Order.

(20) Regulation 51(1A) was inserted by regulation 16 of S.I. 1990/629.

(21) S.I. 1986/2209, the citation of this instrument was amended by sections 3(1)(b) and (2)(b) of the European Communities (Amendment) Act 1986 (c. 58) on the coming into force of the Single European Act (Cmnd, 9758) on 1st July 1987 and there have been other amendments which are not relevant to this Order.

(22) S.I. 1986/2213, amended by S.I. 1990/262 and S.I. 1995/1948.

(23) Rule 4 was amended by paragraph 3(c) of Schedule 1 to S.I. 1995/1948.

- (b) in rule 21(3)(a) the words “division or” shall be omitted; and
 - (c) in rule 46(1) for the words “region, islands area or district, as the case may be,” there shall be substituted the words “local government area”.
- (4) In the Appendix of Forms set out in Schedule 2—
- (a) in the title in the form of the notice of election the words “[REGIONAL] [ISLANDS] [DISTRICT]” shall be omitted;
 - (b) in the form of the nomination paper in note 4 the words “division or” shall be omitted;
 - (c) in the form of the notice of poll for the words “[REGIONAL] [ISLANDS] [DISTRICT] [COUNCIL]”, there shall be substituted the words “[] COUNCIL”;
 - (d) in the form of the elector’s official poll card the word “division/” shall be omitted;
 - (e) in the form of the proxy’s official poll card the word “division/” shall be omitted;
 - (f) for the words “[Region], [Islands Area], [District]” and “[region] [islands area] [district]” wherever they appear, there shall be substituted the words “Local Government Area” and “local government area” respectively;
 - (g) for the words “[Regional] [Islands] [District]” and “[regional], [islands], [district]” wherever they appear, there shall be substituted the words “Local Government” and “local government” respectively;
 - (h) for the words “[Regional] [Islands Area] [District]” wherever they appear, there shall be substituted the words “Local Government Area”;
 - (i) for the words “[Electoral Division] [Ward]” and “[Electoral Division(s)] [Ward(s)]”, there shall be substituted the words “Electoral Ward” and “Electoral Ward(s)” respectively;
 - (j) for the words “[electoral division], [ward]” and “[electoral divisions] [wards]” wherever they appear, there shall be substituted the words “electoral ward” and “electoral wards” respectively;
 - (k) for the words “[ELECTORAL DIVISION] [WARD]” there shall be substituted the words “ELECTORAL WARD”;
 - (l) for the words “[electoral division(s)], [ward(s)]” wherever they appear, there shall be substituted the words “electoral ward(s)”;
 - (m) for the words “[division(s)], [ward(s)]” wherever they appear, there shall be substituted the word “ward(s)”.
- (5) In Schedule 3 (modification to the local elections rules for combined polls under section 15(1) or (2) of the Representation of the People Act 1985(24))—
- (a) for the words “for *[this region] *[this islands area] *[this district] * (*delete whichever is inapplicable*)” which are inserted in question (ii) in sub-paragraphs (a) and (b) of paragraph (1) of rule 28 of the local elections rules and in the second question of paragraph (2) of that rule by paragraph 8 of that Schedule, there shall be substituted the words “for this local government area”;
 - (b) in paragraph (1) of rule 38 of the local elections rules as substituted by paragraph 18 of that Schedule—
 - (i) in sub-paragraph (d) between the words “parliamentary election” and “European”, there shall be inserted the words “or, as the case may be,” and the words from “or, as the case may be, other local government election” shall be omitted; and
 - (ii) the words from “In the application” to “returning officer” shall be omitted;

(24) 1985 c. 50.

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- (c) in paragraph (2) of rule 38 of the local elections rules, as substituted by paragraph 18 of that Schedule, for the words “regional council election or district council election, as the case may be” there shall be substituted the words “local government election”;
- (d) in the provisions added to paragraphs (1) and (2) of rule 48 of the local elections rules by paragraph 20 of that Schedule between the words “parliamentary election” and “European”, there shall be inserted the words “or, as the case may be,” and the words “or, as the case may be, other local government election,” shall be omitted; and
- (e) in the provisions inserted by paragraph 24 of that Schedule in the form of declaration to be made by the companion of a blind voter in the Appendix of Forms in Schedule 2 of the local elections rules—
 - (i) for the words “of this *region/*islands area/*district” there shall be substituted the words “of this local government area”; and
 - (ii) the words “/*this electoral area of this */region/*district” shall be omitted.

The Crown Office (Forms and Proclamations Rules) Order 1992

13. Form D in Part II of the Schedule to the Crown Office (Forms and Proclamations Rules) Order 1992(25) shall be amended as follows:—

- (a) for the words “Our District of”, there shall be substituted the words “Our Local Authority Area of”; and
- (b) for the words “Our said district” wherever it occurs, there shall be substituted the words “our said local authority area”.

The Civil Defence (General Local Authority Functions) (Scotland) Regulations 1993

14.—(1) The Civil Defence (General Local Authority Functions) (Scotland) Regulations 1993(26) shall be amended as follows.

- (2) For regulation 2, there shall be substituted the following regulation:—

“Interpretation

2. In these Regulations, “local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994.”.

- (3) For regulation 4, there shall be substituted the following regulation:—

“Civil defence functions of local authorities

- 4.—(1)** It shall be the function of every local authority, for civil defence purposes—
 - (a) to make, keep under review and revise plans for their area and to carry out exercises based on such plans;
 - (b) to arrange for the training—
 - (i) of an appropriate number of suitable members of their own staff;
 - (ii) of such other persons as they consider necessary,for the purposes of carrying out plans made under sub-paragraph (a) above and discharging the other functions conferred by this regulation; and

(25) S.I. 1992/1730.

(26) S.I. 1993/1774.

(c) at the request of the designated Minister, or where the local authority considers it appropriate—

(i) to take such preparatory steps as may be necessary to ensure that plans made under sub-paragraph (a) above can be carried out; and

(ii) to carry out any of those plans.

(2) When making or revising plans under paragraph (1)(a) above a local authority shall consult with any local authority whose area may be affected by such plans.”

(4) Regulation 5 shall be omitted.

SCHEDULE 2

Article 7(2)

Column 1 Chapter	Column 2 Short Title	Column 3 Extent of Repeal
1925 c. 33	The Church of Scotland (Property and Endowments) Act 1925	In section 32, the words “islands or district”, except where they first occur in subsection (1), and in subsection (5)(a) and (b), the words “, as the case may be,”.
1973 c. 65	The Local Government (Scotland) Act 1973	In section 50G(1)(a) the words “division or”.
1986 c. 31	The Airports Act 1986	In section 63(8), the words “and section 202(13) of the Local Government (Scotland) Act 1973”.

SCHEDULE 3

Article 8

REVOCATIONS

1. The Lord-Lieutenants Order 1975**(27)**.
2. The Local Government (Transitional Election Arrangements) (Scotland) Order 1994**(28)**.
3. The Local Government (Application of Enactments) (Scotland) Order 1995**(29)**.
4. The Local Government (Transitional Provisions) (Scotland) Order 1995**(30)**.
5. The Local Government (Application of Enactments) (Scotland) (No.2) Order 1995**(31)**.

(27) S.I. [1975/428](#).

(28) S.I. [1994/3255](#).

(29) S.I. [1995/789](#).

(30) S.I. [1995/1878](#).

(31) S.I. [1995/2766](#).

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EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes transitional and consequential provisions pursuant to local government reorganisation in Scotland as at 1st April 1996 in terms of the Local Government etc. (Scotland) Act 1994.

Articles 2 to 4 make transitional provision relating to the operation of district courts. Article 2 provides for references to a district court clerk in fixed penalty notices and conditional offers under Road Traffic legislation and conditional offers under section 56(1) of the Criminal Justice (Scotland) Act 1987 issued before 1st April 1996 to be construed as a reference to the clerk for the relevant area after that date.

Article 3 provides for warrants issued by Justices of the Peace to have continued effect where granted prior to 1st April 1996.

Article 4 provides for continuity of duty rotas for Justices of the Peace until the first rotas can be established by new authorities as is done annually as at 16th June in terms of section 16 of the District Courts (Scotland) Act 1975.

Article 5 deals with the position where a planning application has been made by a local authority which is not the planning authority but has not been determined at 1st April 1996 and, as result of reorganisation, the applicant becomes the planning authority itself. The application is deemed by that provision to have been withdrawn immediately before that date.

Article 6 deems councillors elected to the councils for islands areas to be elected under the said Act of 1994 in respect of the period up to the next ordinary election of councillors in 1999 to ensure the proper application to those councillors of sections 30 and 33 of the Local Government (Scotland) Act 1973 dealing with entitlement to be re-elected and validity of actings where an election is questioned.

Article 7 and Schedules 1 and 2 make consequential amendments to (and repeals of) various enactments mainly for the purpose of translating references to new authorities or new legislation. In particular, sections 30, 33 and 36 of the Local Government (Scotland) Act 1973 and sections 187, 188 and 210 of the Representation of the People Act 1983 are amended as elections to new local authorities are now held under the said Act of 1994 rather than the said Act of 1973.

The Licensing (Scotland) Act 1976 is amended to correct an erroneous cross-reference and the Airports Act 1986 is amended to reflect the repeal by the said Act of 1994 of section 202(13) of the Local Government (Scotland) Act 1973.

Article 8 and Schedule 3 revoke certain spent provisions.