
STATUTORY INSTRUMENTS

1995 No. 2499 (S.181)

LOCAL GOVERNMENT, SCOTLAND

**The Local Authorities (Property
Transfer) (Scotland) Order 1995**

Made - - - - *25th September 1995*
Laid before Parliament *26th September 1995*
Coming into force - - *17th October 1995*

The Secretary of State, in exercise of the powers conferred on him by sections 15 and 181(1) and (2) (a) of the Local Government etc. (Scotland) Act 1994⁽¹⁾ (and section 15 as applied by section 138 of that Act), and of all other powers enabling him in that behalf, hereby makes the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Local Authorities (Property Transfer) (Scotland) Order 1995 and shall come into force on 17th October 1995.

(2) In this Order, unless the context otherwise requires—

“the 1994 Act” means the Local Government etc. (Scotland) Act 1994;

“the Administration” means the Scottish Children’s Reporter Administration established under section 128 of the 1994 Act;

“authority” means—

- (a) a regional or district council;
- (b) an authority constituted under section 2 of the 1994 Act; and
- (c) a joint board;

“disaggregating authority” means an authority specified in Schedule 1 to this Order;

“excluded property” means—

- (a) property which will transfer under or by virtue of section 16 (Property held on trust) or 17 (Educational endowments) of the 1994 Act;
- (b) property which on 1st April 1996 will, by virtue of section 40(2) of the 1994 Act, transfer to and vest in the Strathclyde Passenger Transport Authority;

- (c) property which on 1st April 1996 will, under or by virtue of section 91 of the 1994 Act, transfer to and vest in a new water and sewerage authority;
- (d) property which on 1st April 1996 will, by virtue of a scheme made under section 22 of the Environment Act 1995(2), transfer to and vest in the Scottish Environment Protection Agency;
- (e) property which on 1st April 1996 will, by virtue of the Roads (Transitional Powers) (Scotland) Order 1995(3), transfer to and vest in the Secretary of State;
- (f) property which on 1st April 1996 will, by virtue of regulations made under section 7 of the Superannuation Act 1972(4), transfer to and vest in an authority for the purposes of the maintenance and administration of a superannuation fund;
- (g) property which is vested in a disaggregating authority by virtue of, and wholly for the purposes of, its functions as a police authority and which on 1st April 1996 will, by virtue of article 8 below, transfer to and vest in a joint board;
- (h) property which is vested in a disaggregating authority by virtue of, and wholly for the purposes of, its functions as a fire authority and which on 1st April 1996 will, by virtue of article 9 below, transfer to and vest in a joint board;
- (i) property which on 1st April 1996 will, by virtue of article 10 below, transfer to and vest in a joint board;
- (j) property which on 1st April 1996 will, by virtue of article 11(1) and (2) below, transfer to and vest in the Administration;
- (k) property which immediately before 1st April 1996 is held by an authority as part of the common good and will, by virtue of article 12 below, transfer to and vest in the authority referred to therein;

“property” includes any property whether heritable or moveable together with any rights, liabilities and obligations related thereto;

“the property commission” means the Local Government Property Commission (Scotland) established under the 1994 Act(5);

“relevant property” means all property other than excluded property;

“successor authority” in relation to a disaggregating authority, means an authority which will, on and after 1st April 1996, exercise functions in relation to all or any part of the area of that disaggregating authority.

Transfer of local authority property

2. Subject to article 11(3) below, on 1st April 1996 all relevant property vested immediately before that date in an authority specified in Column 1 of Schedule 2 to this Order shall transfer to and vest in the authority specified in the related entry in Column 2 of that Schedule.

3.—(1) Subject to article 11(3) below, on 1st April 1996 all relevant property vested immediately before that date in a disaggregating authority shall transfer to and vest in such one or more of its successor authorities as—

(a) may be agreed—

- (i) subject to paragraph (ii) below, between those successor authorities which are authorities constituted under section 2 of the 1994 Act; and

(2) 1995 c. 25.

(3) S.I. 1995/1476.

(4) 1972 c. 11.

(5) See S.I. 1995/2500.

- (ii) in relation to any property which immediately before 1st April 1996 is used wholly or partly for the purposes of a function which on and after that date will be exercised by a joint board, between those successor authorities which are authorities constituted under section 2 of the 1994 Act and that joint board,
in each case on such terms and subject to such conditions (if any) as may be so agreed;
 - (b) in the absence of such agreement, may, on the application of one or more of the successor authorities, be determined by the property commission, on such terms and subject to such conditions (if any) as the commission may determine.
- (2) Any relevant property of a disaggregating authority which does not, on 1st April 1996, transfer to and vest in a successor authority by virtue of paragraph (1) above shall, subject to paragraph (3) below, on that date transfer to and vest in the relevant successor authority.
- (3) Where before 1st April 1996, the destination of any relevant property vested in a disaggregating authority has been referred to the property commission for determination, but such determination has not by that date been made, the property commission may—
 - (a) before that date make a direction as to the rights of use which a successor authority which is not the relevant successor authority is to have in that property in the event of that property vesting in the relevant successor authority by virtue of paragraph (2) above; and
 - (b) on and after 1st April 1996 and before 31st December 1997 make a direction that the authority to whom, by virtue of paragraph (2) above, that property was transferred shall transfer it to such other successor authority as may be specified, on such terms and subject to such conditions (if any) as may be so specified.
- (4) In paragraphs (2) and (3) above, the “relevant successor authority” is—
 - (a) in respect of heritable property and corporeal moveable property situated, immediately before 1st April 1996, within the area of the particular disaggregating authority concerned, the successor authority constituted under section 2 of the 1994 Act in whose area that property is so situated or, where the property commission nominates another successor authority for that purpose, that authority;
 - (b) in respect of heritable property and corporeal moveable property situated, immediately before 1st April 1996, outwith the area of the particular disaggregating authority concerned, a successor authority nominated, whether in respect of such property generally or of specific property, for that purpose by the property commission; and
 - (c) in respect of incorporeal moveable property, a successor authority nominated, whether in respect of such property generally or of specific property, for that purpose by the property commission.

Procedure as to reaching agreement relating to transfers

- 4.—(1) Each disaggregating authority shall, not later than 20th October 1995—
 - (a) provide to its successor authorities which are constituted under section 2 of the 1994 Act—
 - (i) a list of its relevant property; and
 - (ii) a list of so much of its property as, in the opinion of that disaggregating authority, will transfer to and vest in an authority (or the Administration, as the case may be), by virtue of articles 8 to 12 below;
 - (b) provide to a successor authority which is a joint board, a list of so much of its property as in its opinion will immediately before 1st April 1996 be used wholly or partly for the purposes of functions which will on and after 1st April 1996 be exercisable by that joint board; and

- (c) provide to the Administration, a list of so much of its property as in its opinion will immediately before 1st April 1996 be used wholly or partly for the purposes of functions which will on and after 1st April 1996 be exercisable by the Administration.

(2) In the application of paragraph (1) above to a successor authority which is a joint board and is constituted after 20th October 1995, that paragraph shall apply as if, for the reference to that day, there was substituted the day seven days after the disaggregating authority concerned receives notice of the constitution of the joint board concerned.

Determination by the property commission

5.—(1) In determining for the purpose of article 3 above the authority to which relevant property should be transferred (or in the making of a direction thereunder, as the case may be), the property commission shall take into account and shall apply, so far as it considers it appropriate in the particular circumstances to do so, the principles set out in paragraph (2) below.

(2) The principles referred to in paragraph (1) above are—

- (a) that heritable property situated within the area of a disaggregating authority should (save where the property commission considers that such property should transfer to and vest in a joint board, or the Administration, as the case may be) transfer to, and vest in, the authority constituted under section 2 of the 1994 Act within whose area the property is situated;
- (b) that heritable property situated outwith the area of a disaggregating authority should transfer to, and vest in, the authority which, in the opinion of the property commission (having regard in particular to patterns of use prior to 1st April 1996) is likely to make the greatest use of that property on and after that date;
- (c) subject to sub-paragraph (e) below, that moveable property should transfer to (and, where appropriate, be divided between) the authority or authorities which will, on and after 1st April 1996, have the function for the purposes of which that property was used or held immediately before that date and in relation to the area for which that property was so used or held;
- (d) that, where the authority to which the relevant property should be transferred in terms of sub-paragraph (c) above cannot be identified or the application of sub-paragraph (c) above is not appropriate, the destination of moveable property shall be determined taking account of—
 - (i) the need to ensure, as far as possible, the continued provision of services after 1st April 1996 and to act fairly as between authorities;
 - (ii) the identity of the authority which, on the basis of the pattern of use prior to 1st April 1996, is likely to be the major user of that property after that date;
 - (iii) the location of the property immediately before 1st April 1996 and the authority to which the building in which or the land on which it is situated will transfer;
 - (iv) the authority or authorities by whom staff who, immediately before 1st April 1996, use the property will be employed;
 - (v) any connection between items of property which suggests that those items should be transferred to the same authority; and
- (e) that property consisting of shares (or an interest in shares held by a nominee) in an incorporated company (whether a company within the meaning of the Companies Act 1985(6) or not) should be transferred to or, as the case may be, divided between—

- (i) where the company is a company whose business relates substantially to the exploitation of buildings or other heritable property, the successor authorities constituted under section 2 of the 1994 Act for the areas within which the heritable property in question is situated;
- (ii) in other cases, the successor authorities constituted under section 2 of the 1994 Act for the areas within which the business of the incorporated company in question is conducted.

User rights

6.—(1) The property commission, in relation to the transfer of any heritable property by virtue of a determination of its under article 3(1) above, or a direction made under article 3(3) above, may make that determination or, as the case may be, direction conditional upon the authority to which that property is proposed to be transferred entering into an agreement with such other authority or authorities as the commission may determine for the use of the property (for such period and upon such terms as, in the absence of agreement, the commission may determine) by that other authority or by those other authorities.

(2) In considering whether such a condition as is referred to in paragraph (1) above would be appropriate in relation to any property, the property commission shall take into account in particular the extent (if any) to which immediately before 1st April 1996, that property was occupied or used in whole or in part for purposes of a function which will on and after 1st April 1996 in relation to a particular area be a function of an authority other than that to which the property is proposed to be transferred.

Right to share in proceeds of disposal

7.—(1) The property commission if requested to do so by one or more of the successor authorities in relation to the transfer of any heritable property by virtue of a determination of its under article 3(1) above, or a direction made under article 3(3) above, may make that determination or, as the case may be, direction conditional upon the authority to which that property is proposed to be transferred entering into an agreement whereby it undertakes either—

- (a) to dispose of that property within such period, in such manner and on such terms and subject to such conditions as the commission may specify and to make payment of such part of the proceeds of that disposal as may be so specified to such authorities, and in such proportions, as may be so specified; or
- (b) to make payment, within such period and in such manner as the commission may specify, of such sums, and to such authorities, as may be so specified.

(2) In any case described in paragraph (4) below, the property commission shall impose such a condition as is referred to in paragraph (1) above unless by reason of the particular circumstances it considers it inappropriate to do so.

(3) In any case other than that described in paragraph (4) below, the property commission shall not impose such a condition as is referred to in paragraph (1) above unless by reason of the particular circumstances it considers it appropriate to do so.

(4) The case referred to in paragraphs (2) and (3) above is that—

- (a) the property immediately before 1st April 1996 directly served an area including the areas or part of the areas of more than one successor authority; and
- (b) any staff employed at that property are transferred as at 1st April 1996 to the employment of more than one of the successor authorities concerned rather than to any one successor authority.

Property of Police Authorities

8. On 1st April 1996, all property which is vested in a disaggregating authority by virtue of, and wholly for the purposes of, its functions as a police authority shall transfer to and vest in the joint police board constituted by virtue of section 21B of the Police (Scotland) Act 1967⁽⁷⁾ in respect of the area of that disaggregating authority.

Property of Fire Authorities

9. On 1st April 1996, all property which is vested in a disaggregating authority by virtue of, and wholly for the purposes of, its functions as a fire authority shall transfer to and vest in the joint board constituted by virtue of section 147 of the Local Government (Scotland) Act 1973⁽⁸⁾ in respect of the area of that disaggregating authority.

Valuation authorities

10. On 1st April 1996, all property—

- (a) which is vested in a disaggregating authority (other than Strathclyde Regional Council) by virtue of, and wholly for the purposes of, its functions as a valuation authority; or
- (b) which is vested in a joint committee established under the Valuation (Combination of Councils) (Scotland) (No.2) Order 1974⁽⁹⁾,

shall transfer to and vest in the joint board which is by virtue of the Valuation Joint Boards (Scotland) Order 1995⁽¹⁰⁾ to be, with effect from that date, the valuation authority for the area of the disaggregating authority or joint committee, as the case may be.

Scottish Children's Reporter Administration

11.—(1) On 1st April 1996, all such property as is vested in a regional or islands council by virtue of and wholly for the purposes of—

- (a) their functions under section 34(3) of the Social Work (Scotland) Act 1968⁽¹¹⁾;
- (b) their function of providing accommodation and facilities for, or otherwise facilitating or supporting the performance of the functions of, reporters appointed under subsection (1) of section 36 of the said Act of 1968⁽¹²⁾ or staff provided in pursuance of subsection (6) of that section,

shall transfer to and vest in the Administration.

(2) Without prejudice to paragraph (1) above, on 1st April 1996, all property of reporters appointed under section 36(1) of the said Act of 1968 shall transfer to and vest in the Administration.

(3) In relation to any property which, immediately before 1st April 1996, a regional or islands council has partly for the purposes of the functions referred to in paragraph (1)(a) and (b) above, articles 3, 5, 6 and 7 above shall apply as if—

- (a) the regional or islands council concerned were a disaggregating authority; and
- (b) the Administration were a successor authority.

⁽⁷⁾ 1967 c. 77. Section 21B was inserted by the 1994 Act, section 34.

⁽⁸⁾ 1973 c. 65. Section 147 was substituted by the 1994 Act, section 36.

⁽⁹⁾ S.I. 1974/1565.

⁽¹⁰⁾ S.I. 1995/2589.

⁽¹¹⁾ 1968 c. 49.

⁽¹²⁾ Section 36(1) was repealed in part by the Local Government (Scotland) Act 1973 (c. 65), Schedule 27, paragraph 185(a) and Schedule 29.

(4) Each authority specified in column 1 of Part I of Schedule 2 to this Order shall, not later than 20th October 1995, provide to the authority specified in column 2 of that Part of that Schedule opposite that entry in column 1 and to the Administration, a list of so much of its property as in its opinion will immediately before 1st April 1996 be used wholly or partly for the purposes of functions which will on and after 1st April 1996 be exercisable by the Administration.

(5) Each islands council shall, not later than 20th October 1995, provide to the Administration, a list of so much of its property as in its opinion will immediately before 1st April 1996 be used wholly or partly for the purposes of functions which will on and after 1st April 1996 be exercisable by the Administration.

Common good

12. On 1st April 1996 any property which immediately before that day was held by an authority as part of the common good shall transfer to and vest in the authority within whose area was situated the burgh of whose common good that property (or property which has been replaced by that property) formed part on 15th May 1975.

St Andrew's House,
Edinburgh
25th September 1995

Michael B Forsyth
One of Her Majesty's Principal Secretaries of
State, Scottish Office

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

SCHEDULE 1

Article 1

DISAGGREGATING AUTHORITIES

Central Regional Council
 Grampian Regional Council
 Lothian Regional Council
 Strathclyde Regional Council
 Tayside Regional Council
 Strathkelvin District Council
 Dumbarton District Council
 City of Dundee District Council
 City of Glasgow District Council
 Renfrew District Council

SCHEDULE 2

Article 2

DESIGNATION OF AUTHORITIES FOR THE PURPOSE OF
TRANSFER AND VESTING OF RELEVANT PROPERTY

Column 1	Column 2
PART I	
Highland Regional Council	Highland Council
Fife Regional Council	Fife Council
Borders Regional Council	Scottish Borders Council
Dumfries and Galloway Regional Council	Dumfries and Galloway Council
PART II	
City of Aberdeen District Council	Aberdeen City Council
Banff and Buchan District Council	Aberdeenshire Council
Gordon District Council	Aberdeenshire Council
Kincardine and Deeside District Council	Aberdeenshire Council
Angus District Council	Angus Council
Argyll and Bute District Council	Argyll and Bute Council
Kilmarnock and Loudoun District Council	East Ayrshire Council
Cumnock and Doon Valley District Council	East Ayrshire Council
Cunninghame District Council	North Ayrshire Council
Kyle and Carrick District Council	South Ayrshire Council
Berwickshire District Council	Scottish Borders Council
Ettrick and Lauderdale District Council	Scottish Borders Council

Column 1	Column 2
Roxburgh District Council	Scottish Borders Council
Tweeddale District Council	Scottish Borders Council
Clackmannan District Council	Clackmannanshire Council
Clydebank District Council	Dumbarton and Clydebank Council
Annandale and Eskdale District Council	Dumfries and Galloway Council
Nithsdale District Council	Dumfries and Galloway Council
Stewartry District Council	Dumfries and Galloway Council
Wigtown District Council	Dumfries and Galloway Council
Bearsden and Milngavie District Council	East Dunbartonshire Council
City of Edinburgh District Council	City of Edinburgh Council
Falkirk District Council	Falkirk Council
Dunfermline District Council	Fife Council
Kirkcaldy District Council	Fife Council
North East Fife District Council	Fife Council
Badenoch and Strathspey District Council	Highland Council
Caithness District Council	Highland Council
Inverness District Council	Highland Council
Lochaber District Council	Highland Council
Nairn District Council	Highland Council
Ross and Cromarty District Council	Highland Council
Skye and Lochalsh District Council	Highland Council
Sutherland District Council	Highland Council
Inverclyde District Council	Inverclyde Council
Cumbernauld and Kilsyth District Council	North Lanarkshire Council
Motherwell District Council	North Lanarkshire Council
Monklands District Council	North Lanarkshire Council
Clydesdale District Council	South Lanarkshire Council
Hamilton District Council	South Lanarkshire Council
East Kilbride District Council	South Lanarkshire Council
East Lothian District Council	East Lothian Council
Midlothian District Council	Midlothian Council
West Lothian District Council	West Lothian Council
Moray District Council	Moray Council
Perth and Kinross District Council	Perthshire and Kinross Council

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Column 1	Column 2
Eastwood District Council	East Renfrewshire Council
Stirling District Council	Stirling Council

Column 1	Column 2
Lothian and Borders Police Board, constituted by virtue of the South-Eastern Police (Amalgamation) Order 1975(13)	The Joint Police Board constituted by virtue of section 21B of the Police (Scotland) Act 1967 in relation to the police force maintained for the combined Lothian and Borders police area
Northern Joint Police Committee, constituted by virtue of the Northern Police (Amalgamation) Order 1975(14)	The Joint Police Board constituted by virtue of section 21B of the Police (Scotland) Act 1967 in relation to the police force maintained for the combined Northern police area
Lothian and Borders Fire Board, constituted by virtue of the South Eastern Combined Fire Area Administration Scheme Order 1975(15)	The Joint Board constituted by virtue of section 147 of the Local Government (Scotland) Act 1973 for the combined South Eastern area
Highland and Islands Fire Board, constituted by virtue of the Northern Combined Fire Area Administration Scheme Order 1975(16)	The Joint Board constituted by virtue of section 147 of the Local Government (Scotland) Act 1973 for the combined Northern area

EXPLANATORY NOTE

(This note is not part of the Order)

As a result of local government reorganisation in Scotland as at 1st April 1996 by virtue of the Local Government etc. (Scotland) Act 1994 (“the 1994 Act”), this Order provides for the transfer of certain property and rights, obligations and liabilities related thereto from existing local authorities to new unitary councils, police, fire or valuation joint boards or the Scottish Children’s Reporter Administration, as the case may be.

Article 2 provides that all property (other than property specifically excluded from the scope of the Order or transferred by articles 8 to 12 of the Order) vested in an authority specified in column 1 of Schedule 2 to the Order shall transfer to and vest in the authority specified in the related entry in column 2 of that Schedule. This deals with the transfer of property where the area of the successor equates to or is larger than the area of the existing authority.

Article 3 makes provision in respect of the transfer of all such property vested in a disaggregating authority (within the meaning of article 1(2)) which is an authority which will transfer property to more than one successor unitary authority. Such property will, in accordance with article 3, transfer

(13) S.I. 1975/633, amended by S.I. 1989/66 and 1992/576.

(14) S.I. 1975/632, amended by S.I. 1982/231 and 1990/662.

(15) S.I. 1975/487, amended by S.I. 1989/67 and 1993/800.

(16) S.I. 1975/829, amended by S.I. 1982/232, 1983/282 and 1990/663.

to the new unitary authorities (or to joint boards) in terms of agreements which may be reached by them, for that purpose. In terms of article 3(1)(b) in the absence of such agreement and on the application of a new authority the Local Government Property Commission (Scotland) established under section 19 of the 1994 Act (see S.I. 1995/2500) may determine the successor authority to whom such property shall transfer, on such terms and conditions as it may determine.

Article 3(2) provides for the transfer of relevant property at 1st April 1996 in the absence of agreement or a determination by the property commission. In that case, the property concerned will in general transfer to the unitary council in whose area the property is located before 1st April 1996 or in respect of incorporeal moveable property to the successor as nominated by the property commission. The property commission, in terms of article 3(3), where a matter has been referred to them for determination, may direct that rights of use shall be made available to nominated successor authorities and may direct the transfer of property after 1st April 1996 (but before 31st December 1997) to such other successor authority as the property commission may specify.

Article 4 imposes on each disaggregating authority a duty to provide a list of its relevant property to successor unitary councils and a list of such property it considers will transfer to a joint board or the Scottish Children's Reporter Administration and as appropriate provide to joint boards and to the Administration a list of property relevant to that authority.

Article 5 requires the property commission in carrying out its duty under article 3 to have regard, subject to particular circumstances of a case before it, to the principles set out in article 5(2).

Article 6 provides for the property commission (where articles 3(1)(b) or 3(3) apply) to require the authority to whom the property is to be transferred to enter into an agreement allowing use of the property by another authority. The property commission is required to take into account the use of the property concerned and the functions for which it was used prior to 1st April 1996.

Article 7(1) provides that where requested, the property commission may require that an agreement be entered into for the later disposal of the property concerned on the basis of division of the proceeds of the sale among specified successor authorities or of the making of payments in lieu of such sale and division. The article also provides for the circumstances in which such a division should be imposed.

Articles 8 to 10 provide for transfer of property wholly used for the purposes of certain specific functions. Articles 8 and 9 provide for police or as the case may be fire property to be transferred to the joint board constituted for that purpose. Article 10 deals with transfer of property to new valuation joint boards established by the Valuation Joint Boards (Scotland) Order 1995 (other than in respect of the area of Strathclyde Region where article 3 will apply).

Article 11 provides for transfer of property which by virtue of Part III of the 1994 Act relates to functions to be carried out by the Scottish Children's Reporter Administration. Paragraphs (1) and (2) deal with direct transfer to the Administration where property is used wholly for the purposes of those functions. Paragraph (3) applies articles 3, 5, 6 and 7 with modifications where property is only partly so used. Paragraphs (4) and (5) impose obligations on certain regional councils and on islands councils to provide their successors with lists of property relevant to those functions.

Article 12 provides for transfer of property held by an authority as part of its common good to transfer to the authority within whose area was situated the burgh of whose common good that property formed part on 15th May 1975.