

LOCAL GOVERNMENT IN SCOTLAND ACT 2003

EXPLANATORY NOTES

THE ACT – SECTION BY SECTION

Part 3 – Power to advance well-being

Section 20 – Power to advance well-being

55. This section sets out the power for local authorities to advance well-being.
56. *Subsection (1)* enables a local authority to do anything it considers likely to promote or improve the well-being of its area, persons in that area, or both of these. *Subsection (2)* sets out potential activities that may be undertaken using the power to advance well-being. This list is illustrative rather than limiting.
57. *Subsection (3)* allows flexibility in the way the power may be used. The power may be used in relation to the whole local authority area or any part of that area, for example, to a council-wide project covering the whole council area or to a project for a particular community; a particular town; or a particular island within the area. Similarly, the power may be used in relation to all or some of the persons within a local authority area – for example, to benefit all residents, a particular group such as tourists to the area or commuters into the area. *Subsection (4)* enables a local authority to use the power outwith its geographical area if it considers doing so is likely to promote or improve the well-being of its own area and/or persons within its area.
58. *Subsection (5)* enables the Scottish Ministers, by order, to extend the meaning of “well-being”. This power might be used if, for example, the common understanding of the phrase becomes narrower or changes significantly over time.

Section 21 – Guidance on exercise of power under section 20

59. This section requires a local authority to have regard to any guidance given by the Scottish Ministers relating to the exercise of the power to advance well-being. A requirement is also placed on the Scottish Ministers to consult associations of local authorities and any other persons they consider appropriate before issuing such guidance.

Section 22 -Limits on power under section 20

60. This section sets out the limitations on how local authorities can use the power to advance well-being.
61. *Subsections (1)* and *(2)* establish that the power to advance well-being does not enable a local authority to do anything that is expressly prohibited, prevented, restricted or limited by other legislation.
62. *Subsection (3)* establishes that use of the power to advance well-being is not limited by what may be deemed an implied, rather than an explicitly stated restriction, prohibition, prevention or limitation.

*These notes relate to the Local Government in Scotland Act
2003 (asp 1) which received Royal Assent on 11 February 2003*

63. *Subsection (4)* prevents the power being used in a way that unreasonably duplicates the statutory functions of another body or person. It is for the local authority to consider whether any proposed action is reasonable. *Subsection 5* makes clear that such exercise of the power would not be considered unreasonable where the other person had consented.
64. *Subsection (7)* prevents a local authority from raising money by levying any form of tax or charge, by borrowing or otherwise. *Subsection (8)* states that nothing in subsection (7) shall prevent a local authority from continuing to set and determine amounts of council tax or imposing reasonable charges for services provided (subject to *subsection (9)*), so long as doing so is not prohibited by existing legislation.
65. *Subsection (9)* prevents a local authority imposing charges for anything done in pursuance of certain functions. *Subsections (10) to (12)* concern the order making power which allows the Scottish Ministers to prescribe other functions for which charging would be prohibited.
66. *Subsection (13)* provides that the power may be used outside the United Kingdom for the purpose of promoting or improving economic development of the local authority's area but only with the prior consent of the Scottish Ministers.
67. *Subsection (14)* makes the power of well-being subject to section 92(5) of the [Housing \(Scotland\) Act 2001 \(asp 10\)](#) which requires the Scottish Ministers' consent in giving financial assistance for certain housing purposes.