



Local Government in Scotland Act 2003

2003 asp 1

PART 1

BEST VALUE AND ACCOUNTABILITY

Duty to secure best value

1 Local authorities' duty to secure best value

- (1) It is the duty of a local authority to make arrangements which secure best value.
- (2) Best value is continuous improvement in the performance of the authority's functions.
- (3) In securing best value, the local authority shall maintain an appropriate balance among—
 - (a) the quality of its performance of its functions;
 - (b) the cost to the authority of that performance; and
 - (c) the cost to persons of any service provided by it for them on a wholly or partly rechargeable basis.
- (4) In maintaining that balance, the local authority shall have regard to—
 - (a) efficiency;
 - (b) effectiveness;
 - (c) economy; and
 - (d) the need to meet the equal opportunity requirements.
- (5) The local authority shall discharge its duties under this section in a way which contributes to the achievement of sustainable development.
- (6) In measuring the improvement of the performance of a local authority's functions for the purposes of this section, regard shall be had to the extent to which the outcomes of that performance have improved.
- (7) In this section, "equal opportunity requirements" has the same meaning as in Section L2 of Part II of Schedule 5 to the Scotland Act 1998 (c. 46).

2 Considerations bearing on performance of duty under section 1

- (1) In the performance of its duties under section 1 above, a local authority shall have regard—
 - (a) to any guidance provided by the Scottish Ministers for local authorities on the performance of those duties; and such guidance may include guidance on—
 - (i) how to make and what is to be included in the arrangements referred to in subsection (1) of that section;
 - (ii) how to implement the duty imposed by that subsection; and
 - (b) to what are, whether by reference to any generally recognised, published code or otherwise, regarded as proper arrangements for the purposes of section 1(1) above (or purposes which include those purposes).
- (2) Before providing guidance under this section, the Scottish Ministers shall consult such associations of local authorities and such other persons as they think appropriate.
- (3) In the event of a conflict in any respect between the considerations to which a local authority is to have regard under paragraph (a) of subsection (1) above and those to which it has to have regard under paragraph (b) of that subsection, it shall in that respect have regard only to those within paragraph (a).

Enforcement

3 Action by Accounts Commission following report by Controller of Audit

- (1) On a report being made to it by the Controller of Audit under section 102(1) of the Local Government (Scotland) Act 1973 (c. 65) (the “1973 Act”), the Accounts Commission for Scotland may do, in any order, all or any of the following, or none of them—
 - (a) direct the Controller of Audit to carry out further investigations;
 - (b) hold a hearing;
 - (c) state its findings.
- (2) Findings which do not follow a hearing shall, for the purposes of section 103D of the 1973 Act, as applied by section 4 below, be treated as the findings of the members of the Commission holding a hearing.

4 Hearings under section 3 above

- (1) Sections 103C (procedure, evidence etc. at hearings held by Commission) and 103D (findings of hearings) of the 1973 Act apply to hearings held under section 3(1)(b) above as they apply to hearings held under section 103B(1)(b) of that Act.
- (2) For the purposes of subsection (1) above—
 - (a) sections 103C(2) and (5) and 103D(a) of the 1973 Act shall be ignored; and
 - (b) the other provisions of section 103D shall be taken to extend to findings which do not follow a hearing.
- (3) Findings made under section 103D as applied by this section may include recommendations and the persons to whom those recommendations may be made include the Scottish Ministers.

- (4) The Accounts Commission shall give a copy of findings so made to any member or officer of a local authority who was named in the report upon which proceeded the hearing to which the findings relate.
- (5) At a hearing held under section 3 above, the Accounts Commission shall afford—
 - (a) any local authority likely to be affected by any findings made; and
 - (b) any person likely to be so affected (or the representative of such a person), the opportunity of appearing and being heard.
- (6) Subsections (1), (6) and (7) of section 103 of the 1973 Act (which are superseded by provisions of section 3 above and this section) are repealed.

5 Action by local authorities on receipt of findings

- (1) A local authority receiving a copy of findings under section 103D of the 1973 Act as applied by section 4 above shall consider those findings in accordance with section 103E(1) and (2) of that Act and subsections (3) to (7) of the said section 103E shall apply accordingly.
- (2) Sections 5 and 6 of the Local Government Act 1992 (c. 19) are repealed.

Other provisions about best value

6 Accounts Commission's studies and recommendations to include aspects of securing best value

- (1) In subsection (1) of section 97A (Commission's studies for improving economy etc.) of the 1973 Act—
 - (a) after “for”, where first occurring, there is inserted—
 - “(a) the securing by local authorities of best value;
 - (b)”;
 - and
 - (b) for “for”, where second occurring, there is inserted—
“(c)”.
- (2) After that subsection there is inserted—

“(1A) In subsection (1)(a) above, the references to best value and the securing of it are references to best value within the meaning of section 1 of the Local Government in Scotland Act 2003 (asp 1) and the securing of it in accordance with that section.”.

Relaxation of rules about contracts and supply of goods and services

7 Local authority contracts: relaxation of exclusion of non-commercial considerations

- (1) The following provisions of section 17(5) of the Local Government Act 1988 (c. 9) (the “1988 Act”) do not operate in relation to a local authority in any of the cases specified in subsection (2) below—

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paragraph (a) (which provides that the terms and conditions of employment of, and certain other arrangements affecting, contractors' workers are to be disregarded by authorities when exercising certain functions relating to public supply or works contracts);

paragraph (b) (which provides that the question whether contractors sub-contract to self-employed individuals on a services-only basis is to be likewise disregarded); and

paragraph (d) so far as relating to the conduct of contractors or their workers in industrial disputes between them (which paragraph provides that such conduct is to be likewise disregarded).

(2) Those cases are—

- (a) where the local authority reasonably seeks to ensure that a contractor with the authority will comply with the contractor's obligations under the contract;
- (b) where the local authority reasonably seeks to ensure that a contractor with the authority will perform the contractor's obligations under the contract in a way which will not prevent the authority from securing best value or hinder it in doing so; and
- (c) where the local authority has reasonable grounds for believing that the trade contractor's implementation of the contract with the authority would entail a relevant transfer within the meaning of the Transfer of Undertakings (Protection of Employment) Regulations 1981 ([S.I. 1981/1794](#)) or any regulations replacing those regulations, as from time to time amended.

(3) Section 17(5)(h) of the 1988 Act (which provides that the use or non-use by contractors of services provided under the Building (Scotland) Act 1959 ([c. 24](#)) is to be disregarded by authorities when exercising certain functions relating to public supply or works' contracts) ceases to have effect in relation to local authorities.

(4) In this section, "contractor" has the same meaning as in section 17 of the 1988 Act.

8 Relaxation of restrictions on supply of goods and services etc. by local authorities

(1) The Local Authorities (Goods and Services) Act 1970 ([c. 39](#)) is modified as provided in subsections (2) and (3) below.

(2) In section 1 (supply of goods and services etc. by local authorities to public bodies)—

- (a) in subsection (1)—
 - (i) for "public body within the meaning of this section" and "body", wherever subsequently occurring, there is, in each case, substituted "person";
 - (ii) after "may", where it first occurs, there is inserted ", in relation to any relevant trading operation carried on by the authority,";
 - (iii) in paragraph (b), the words "administrative, professional or technical" are repealed;
 - (iv) in paragraph (c), for "vehicle, plant or apparatus belonging to" there is substituted "property belonging to or facilities under the control of" and for "vehicle or other property" there is substituted "property or facility"; and
 - (v) paragraph (d) and the words which follow it are repealed;
- (b) after that subsection there is inserted—

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“(1A) A local authority shall not, in relation to any trading operation carried on by them, enter into an agreement under subsection (1) above if the likely result of doing so would be that the commercial services income accruing to the authority in any financial year under that and all other such agreements already entered into by the authority with such persons in relation to that operation would exceed the statutory limit.

(1B) Subsection (1A) above does not apply in respect of an agreement entered into by a local authority with—

- (a) another local authority;
- (b) a public authority or body; or
- (c) a person who, in the circumstances set out in subsection (1L) below, enters into the contract in order to provide the local authority with goods or services,

or with a person who, not being a public body, has functions of a public nature or engages in activities of that nature and the purpose or effect of the agreement is to facilitate discharge by that person of those functions or that person’s engagement in those activities.

(1C) The restriction in subsection (1A) does not prevent a local authority from entering into an agreement where the likely result of doing so would be that the income referred to in that subsection will exceed the limit there referred to if the Scottish Ministers give prior consent to the authority doing so.

(1D) In subsection (1A) above—

- (a) the “commercial services” income of a local authority is that part of their income which—
 - (i) is derived from agreements entered into for all or any of the purposes set out in subsection (1) above and is, in accordance with proper accounting practices, credited to a trading account kept by the authority for a trading operation;
 - (ii) is derived from relevant dividends; or
 - (iii) is derived from relevant profit sharing agreements;and
- (b) the “statutory limit” for a trading operation is such amount as the Scottish Ministers may, by order, fix.

(1E) For the purposes of subsection (1D) above—

“relevant dividend” means a dividend paid by a body corporate which carries on operations which, if they were carried on by the authority to which the dividend is paid, would be relevant trading operations;

“relevant profit sharing agreement” means an agreement between a local authority and a body corporate which carries on such operations in terms of which the body corporate undertakes to pay to the authority a proportion of any income which it derives from carrying out those operations.

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- (1F) An amount so fixed may be expressed as a fraction of any other amount specified or referred to in the order.
 - (1G) Different amounts may be so fixed for different trading operations or classes of trading operation, and an amount may be so fixed for all trading operations.
 - (1H) Where, for any trading operation, no amount has been so fixed, the prohibition in subsection (1A) above applies, the condition of its application set out in that subsection being ignored.
 - (1I) If, however, in the case of a trading operation for which no amount has been fixed, the Scottish Ministers give prior consent to a local authority entering into an agreement under subsection (1) above in relation to that trading operation, that prohibition does not apply.
 - (1J) An order under subsection (1D)(b) above shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.
 - (1K) Before making such an order, the Scottish Ministers shall consult such persons as they think fit.
 - (1L) The circumstances referred to in paragraph (c) of subsection (1B) above are that the local authority considers that the provision of the goods or services under the contract mentioned in that paragraph will be facilitated if the person who has entered into the contract is within that paragraph.
 - (1M) A local authority shall, before entering any such agreement as is referred to in subsection (1) above, have regard to whether doing so will be likely to promote or improve the well-being of—
 - (a) their area and persons within that area;
 - (b) either of those.
 - (1N) For the purposes of subsection (1M) above, “well-being” is to be construed in the same way as it is construed for the purposes of section 20 of the Local Government in Scotland Act 2003 ([asp 1](#)).
 - (1O) References in this section to a trading operation are, in relation to a local authority, references to a trading operation for which, in accordance with proper accounting practices (within the meaning of section 12 of the Local Government in Scotland Act 2003 ([asp 1](#))) the authority keep trading accounts.
 - (1P) The reference in subsection (1) above to a relevant trading operation is a reference to a trading operation which is carried on for the purpose of enabling a local authority to raise money, by borrowing or otherwise.”;
- (c) in subsection (2)—
- (i) for the words “preceding subsection” there is substituted “subsection (1) above”;
 - (ii) paragraph (a) and the word “or” which immediately follows it are repealed;

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- (iii) after “property” there is inserted “, goods or materials”; and
 - (iv) after “except” there is inserted “(i)” and at the end there is inserted “;
 - (ii) for the purpose of enabling the authority to supply the property, goods or materials or, as the case may be, provide the service to another authority;
 - (iii) in the case of the supply of goods or materials, where that supply is for the purpose of, or is incidental to the purpose of, enabling the authority to supply property or, as the case may be, provide a service; or
 - (iv) in any other case, where the Scottish Ministers have consented to the supply or provision.”;
 - (d) in subsection (4)—
 - (i) the definitions of “public body” and “works of maintenance” are repealed; and
 - (ii) in their place there is inserted—
 - “property” includes land, accommodation, vehicles, plant and apparatus;”; and
 - (e) subsections (5) and (6) are repealed.
- (3) In section 2 (supplemental)—
- (a) in subsection (1) for “public body” there is substituted “person”; and
 - (b) subsections (4) and (5) are repealed.

9 Special provision for local authority contracts for construction of buildings or works

- (1) A local authority may, in accordance with regulations made under this section, enter into an agreement with any person for the construction or maintenance by the authority of any buildings or works.
- (2) The Scottish Ministers may make regulations—
- (a) restricting the exercise of the power under subsection (1) above by reference to the likely gross expenditure of the local authority in any financial year occasioned by its exercise of the power when taken together with the likely gross expenditure of the authority in that year on—
 - (i) all other construction of building or works; and
 - (ii) all works of maintenance of land or buildings, undertaken by the authority, and
 - (b) otherwise prescribing how local authorities are to exercise the power.
- (3) Those regulations may, under subsection (2)(b) above, provide that any code or other document referred to in the regulation is to have effect for the purpose of regulating the exercise of the power under subsection (1) above.
- (4) Those regulations may include provision for the making of reports to the Scottish Ministers and to the public on the exercise of the power under subsection (1) above.

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- (5) Those regulations may make different provision for different authorities or different classes of authority.
- (6) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (7) Before making any such regulations, the Scottish Ministers shall consult such associations of local authorities and such other persons as they think fit.

10 Trading operations and accounts

- (1) It is the duty of a local authority to conduct each of its significant trading operations so that, as respects that operation—
 - (a) in relation to every three year period; and
 - (b) taking every year with the two previous years, revenue is not less than expenditure.
- (2) In subsection (1) above, the references to a local authority’s significant trading operations are references to those of its trading operations for which it must, in accordance with proper accounting practices, disclose trading accounts and, in this subsection, “proper accounting practices” is to be construed in accordance with section 12(2) below.

Disposal of land for less than full value

11 Disposal of land by local authorities for less than full value

- (1) In section 74 of the 1973 Act—
 - (a) in subsection (2) (prohibition of disposal of land for less than best consideration reasonably obtainable except with consent) for the words “with the consent of the Secretary of State,” there is substituted “in accordance with regulations under subsection (2C) below,”;
 - (b) after subsection (2) there are inserted the following subsections—
 - “(2A) Subsection (2) does not extend to a disposal where—
 - (a) the best consideration that can reasonably be obtained is less than the threshold amount; or
 - (b) the difference between that consideration and the proposed consideration is less than the marginal amount.
 - (2B) The Scottish Ministers shall, by regulations, fix the threshold amount and the marginal amount for the purposes of subsection (2A) above.
 - (2C) The Scottish Ministers may, by regulations, provide as to the circumstances in which and procedure by which local authorities may, under this section, dispose of land for a consideration less than the best that can reasonably be obtained.
 - (2D) Those regulations may include provision—
 - (a) requiring a local authority proposing to dispose of land at less than the best consideration that can reasonably be obtained

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- to appraise and compare the costs and other disbenefits and the benefits of the proposal;
 - (b) requiring the local authority, before deciding in favour of the proposal, to be satisfied that so deciding would be reasonable; and
 - (c) setting out factors to which the local authority must have regard when considering whether its decision would be reasonable.
- (2E) References in this section to the best consideration that can reasonably be obtained by a local authority are references to that consideration as assessed by a suitably qualified valuer.
- (2F) In appointing and instructing a suitably qualified valuer for the purposes of subsection (2E) above, the local authority shall have regard to any guidance provided by the Scottish Ministers on—
- (a) what are suitable qualifications;
 - (b) what factors are to be or not to be taken into account by the valuer in assessing the consideration referred to in that subsection.
- (2G) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (2H) Before making such regulations, the Scottish Ministers shall consult such associations of local authorities and such other persons as they think fit.”
- (2) In section 36(20) (power of the fire authorities and joint fire boards to sell land but only with ministerial consent) of the Fire Services Act 1947 (c. 41) the words “with the consent of the Secretary of State” are repealed.

Accounts, finance and performance accountability

12 Proper accounting practices

- (1) It is the duty of a local authority to observe proper accounting practices.
- (2) In subsection (1) above and in paragraph (b) of section 99 (auditor to be satisfied that proper accounting practices have been observed) of the 1973 Act, the references to proper accounting practices are references to accounting practices which fall within one or more of the following—
- (a) those which the local authority is required to observe by virtue of any enactment;
 - (b) those which have been specified in guidance issued for the purposes of this section and that section by the Scottish Ministers;
 - (c) those which, whether by reference to any generally recognised, published code or otherwise, are regarded as proper accounting practices to be observed in the preparation and publication of accounts of local authorities.
- (3) In the event of a conflict in any respect between the practices within paragraph (a) of subsection (2) above and those within paragraph (b) or (c) of that subsection, only

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those within paragraph (a) are to be regarded as proper accounting practices in that respect, and in the event of a conflict in any respect between those within paragraph (b) and paragraph (c) of that subsection, only those within paragraph (b) are, in that respect, to be so regarded.

13 Publication by local authorities of information about finance and performance

- (1) It is the duty of a local authority to make arrangements for the reporting to the public of the outcome of the performance of its functions.
- (2) Subject to subsections (3) and (6) below, it is for the local authority to determine the form, content and frequency of and time limits for reports made under subsection (1) above, to whom they are to be given and by what means they are to be published or made available to members of the public.
- (3) The Scottish Ministers may, by regulations, make provision governing any of the matters set out in subsection (2) above.
- (4) Such regulations shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (5) Before making such regulations, the Scottish Ministers shall consult such associations of local authorities and such other persons as they think fit.
- (6) Such regulations may include provision—
 - (a) for a summary of the local authority's assets and their value, its sources of income, the amounts derived from those sources, and its expenditures to be included in that which is to be reported under subsection (1) above;
 - (b) for the local authority's trading accounts or a summary thereof to be included in that which is to be reported under subsection (1) above;
 - (c) for a summary of the authority's expenditure under such works contracts as may be specified in the regulations to be included in that which is to be reported under subsection (1) above;
 - (d) for the publication of the information which is to be provided under section 1 (power of Accounts Commission to direct publication of information about standards of performance) of the Local Government Act 1992 (c. 19), to be included in that which is to be reported under subsection (1) above; and
 - (e) for—
 - (i) a statement setting out the arrangements the local authority had in place under section 1 above during the financial year immediately preceding that in which the statement is made and describing what it did under those arrangements and to what effect, including an account of how what it did contributed to the achievement of sustainable development;
 - (ii) a statement specifying by what means and when the local authority proposes to carry out its duties under this section during the remainder of the year in which the statement is made; and
 - (iii) a statement specifying any unimplemented recommendations about the performance of the authority's functions made to the authority by any person discharging a power or duty under an enactment to make the recommendation,
 to be included in that which is to be reported under subsection (1) above.

- (7) The Scottish Ministers may issue guidance to local authorities on how those authorities might carry out their functions under this section.
- (8) Before doing so, the Scottish Ministers shall consult such associations of local authorities and such other persons as they think fit.
- (9) In section 1 (Accounts Commission’s power to direct publication of information about the activities, in a financial year of local authorities etc.) of the Local Government Act 1992 (c. 19)—
- (a) in subsection (1)—
 - (i) after “year”, where first occurring, there is inserted “or such other period as is specified in the direction being a period beginning not less than 3 months after the giving of the direction”;
 - (ii) after “effectiveness” there is inserted “and of securing best value in accordance with section 1 of the Local Government in Scotland Act 2003 (asp 1)”;
 - (iii) after “year”, where secondly occurring, there is inserted “or other period”;
 - (iv) after “years”, there is inserted “or, as the case may be, other periods”;
 - (b) in subsection (2), after “year”, in each place where that word occurs, there is inserted “or other period”.
- (10) In section 2 (further provisions about directions) of that Act—
- (a) in subsection (1)(a), after “years” there is inserted “or other periods”; and
 - (b) in subsection (4) there is inserted at the end “or, where another period has, under section 1(1) above, been specified in the direction, than such date as is there specified for the purposes of this subsection.”.

14 Application of this Part to other bodies

This Part of this Act applies also to those bodies to which Part VII (finance) of the 1973 Act applies by virtue of section 106(1) of that Act (application to committees, joint committees and joint boards the members of which are appointed by local authorities and to charities etc. the trustees of which are local authorities or their members).