



Local Government etc. (Scotland) Act 1994

1994 CHAPTER 39

PART I

LOCAL GOVERNMENT REORGANISATION

CHAPTER 3

PROPERTY

15 Transfer of property.

- (1) Subject to subsection (5) below, the Secretary of State may by order provide that any property vested in one or more existing local authorities immediately before 1st April 1996 shall on that date be transferred to and vest in such new authority or authorities as may be specified in or determined under the order.
- (2) An order under this section may include provision for the transfer of all rights, liabilities and obligations of an existing local authority on 1st April 1996 to such new authority or authorities as may be specified in or determined under the order.
- (3) An order under this section may make different provision in relation to—
 - (a) different items or categories of property;
 - (b) different, or different categories of, rights, liabilities or obligations; and
 - (c) different authorities.
- (4) The power to transfer property conferred by this section includes power to transfer property which is held by an existing local authority as part of the common good, but such property may not be transferred to a residuary body and, in administering such property, any authority to which it is transferred shall—

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- (a) except in the case of the councils for Aberdeen, Dundee, Edinburgh and Glasgow, have regard to the interests of the inhabitants of the area to which the common good related prior to 16th May 1975; and
 - (b) in the case of the councils for Aberdeen, Dundee, Edinburgh and Glasgow, have regard to the interests of all the inhabitants of their areas.
- (5) This section does not apply to any property which is transferred under or by virtue of section 16, 17 or 91 of this Act.
- (6) Orders under this section shall be made by statutory instrument, and a statutory instrument containing an order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) For the purposes of this section—
- “existing local authority” includes a joint committee and a joint board but does not, subject to any other provision of this Act, include an islands authority;
 - “new authority” means any of the authorities constituted under section 2 of this Act, and includes a joint board and a residuary body; and
 - “property” includes any records held by, or in the custody of, an existing local authority.

16 Property held on trust.

- (1) All property held on trust immediately before 1st April 1996 by—
- (a) an existing local authority; or
 - (b) a councillor and the proper officer or a specified officer of such an authority,
- shall on that day be transferred to and vest (subject to the same trust) in the appropriate new authority.
- (2) The authority in whom property is vested by virtue of subsection (1) above shall nominate a sufficient number of their councillors to act as trustees of that property and in so doing shall have regard to the terms of the trust deed; and where the property is held immediately before 1st April 1996 by the persons mentioned in subsection (1)(b) above, the authority shall nominate the proper officer as one of the trustees.
- (3) All property held on trust immediately before 1st April 1996 by a specified officer of an existing local authority shall on that date be transferred to and vest (subject to the same trust) in the proper officer of the appropriate new authority.
- (4) Where, immediately before 1st April 1996, property is held on trust by the holder of an office, whether as a councillor, the proper officer or a specified officer, connected with an existing local authority or authorities and any other person, the appropriate new authority or authorities shall, on the application of the trustees, nominate a sufficient number of their councillors to act in place of such holder and in so doing shall have regard to the terms of the trust deed and, where the terms of the trust deed so require, the said authority or authorities shall nominate their proper officer or the proper officer of one of them as one of the trustees.
- (5) Where the area of the existing local authority in which, or in any councillor or officer of which, any trust property is vested falls entirely within the area of a new authority, that new authority is the appropriate new authority for the purposes of this section.

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- (6) Where the area of the existing local authority in which, or in any councillor or officer of which, any trust property is vested falls within the area of two or more new authorities, those authorities may agree in writing as to which of them is or are the appropriate new authority or authorities for the purposes of this section; and such agreement shall be conclusive as to the vesting of the property in one or more of those new authorities.
- (7) Where the authorities mentioned in subsection (6) above cannot reach agreement as to the vesting of any trust property any of them may refer the matter to the Secretary of State, who may give a direction as to which is the appropriate authority or, as the case may be, which are the appropriate authorities; and a direction by the Secretary of State under this subsection shall be conclusive as to the vesting of the trust property in the new authority or authorities concerned.
- (8) An agreement under subsection (6) above and a direction under subsection (7) above may relate to trust property generally, or to particular items, types or classes of such property, or to trust property situated in a particular part of an authority's area.
- (9) In this section—
 - “existing local authority” includes a joint committee and a joint board but does not include an islands authority; and
 - “new authority” includes any of the authorities constituted under section 2 of this Act (other than Orkney Islands, Shetland Islands or Western Isles) and a joint board.
- (10) This section shall not apply to property which is subject to section 17 of this Act.

17 Educational endowments.

- (1) Where, immediately before 1st April 1996, educational endowments are to any extent vested in an existing local authority, the Secretary of State may by order make schemes providing for such endowments, on that date, to be transferred to and vest to the same extent in such new authority or authorities as may be specified in or determined under the scheme.
- (2) A scheme made under this section may provide for educational endowments, to the extent that they are vested by virtue of his office in the holder of an office connected with an existing local authority or in a person nominated by such an authority, to be transferred to and vest in a person holding an office in, or nominated by, such new authority or authorities as may be specified in or determined under the scheme.
- (3) A scheme under this section may provide for powers with respect to an educational endowment which are vested in an existing local authority or, by virtue of his office, in the holder of an office connected with such an authority or in a person nominated by such an authority, to be transferred to and vest in such new authority or authorities or, as the case may be, in a person holding office connected with, or nominated by, such an authority, as may be specified in or determined under the scheme.
- (4) A scheme under this section may provide for any rights to be paid money out of an educational endowment which are vested in an existing local authority to be transferred to and vest in such new authority or authorities as may be specified in or determined under the scheme.
- (5) The Secretary of State may require any existing local authority to provide him, in such form as he may specify, with their proposals for the transfer, in accordance with the

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provisions of this section, of any such educational endowments, powers or rights as are mentioned in subsections (1), (2), (3) or (4) above.

- (6) Subject to subsection (7) below, a scheme under this section may make such provision in relation to an educational endowment as the Secretary of State considers appropriate and, without prejudice to the generality of the foregoing, may include provision for—
 - (a) amending or revoking the governing instrument of an endowment;
 - (b) grouping, amalgamating, combining or dividing any endowments;
 - (c) the purposes to which, and the conditions under which, any such endowments may be applied;
 - (d) incorporating or establishing new governing bodies, or dissolving, combining or uniting any governing bodies;
 - (e) the powers of the governing body of any endowment.
- (7) In exercising his powers under subsection (6) above, the Secretary of State shall make no more changes with respect to any endowment than appear to him to be necessary or expedient in consequence of the alteration of local government areas effected by this Part of this Act.
- (8) Schemes under this section may make different provision in relation to different endowments or categories of endowment, different provision in respect of different items or categories of property, rights, liabilities and obligations, and different provision in respect of different authorities.
- (9) Subject to the provisions of the governing instrument of an educational endowment (including such an instrument made or amended by a scheme under this section), where, as the result of the election of a new authority occurring after 1st April 1996, it is necessary for a person to be nominated by the authority or by a committee thereof to be vested (to any extent) with the endowment, in terms of subsection (2) above, or to be vested with any power, in terms of subsection (3) above, that person shall be so nominated at the first meeting of the authority or committee held after it has been elected or appointed; and in such a case the person who (to the said extent) was last vested with the endowment or, as the case may be, who was last vested with the power, before the meeting shall continue therein until the date of the meeting.
- (10) Section 19 of this Act applies in relation to educational endowments as it applies in relation to the property referred to in that section.
- (11) An order under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (12) Expressions used in this section and in Part VI of the ^{M1}Education (Scotland) Act 1980 have the same meaning in this section as in that Part.
- (13) Nothing in this section shall affect any other power to reorganise any educational endowment or otherwise to alter the provisions of any trust.
- (14) In this section—

“authority” includes an existing local authority and a new authority;

“existing local authority” includes a joint committee and a joint board but does not include an islands authority; and

“new authority” means any of the authorities constituted under section 2 of this Act (other than Orkney Islands, Shetland Islands or Western Isles) and a joint board.

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Marginal Citations

M1 1980 c. 44.

18 Residuary bodies.

- (1) The Secretary of State may by order establish one or more bodies, to be known as “residuary bodies”, for the purpose of—
 - (a) taking over and exercising such functions with respect to such property, rights and liabilities as may be transferred under section 15 of this Act; and
 - (b) exercising such other functions, including, without prejudice to the generality of the foregoing, any functions which may be conferred on a property commission under section 19 of this Act,
 as he may so prescribe.
- (2) An order under this section may apply to a residuary body, with such modifications as may be specified, any enactment which applies to a local authority in Scotland.
- (3) The Secretary of State may give directions to a residuary body as to—
 - (a) the carrying out by them of any of their functions; and
 - (b) the exercise by them of any of the powers conferred on them by or under this section.
- (4) The Secretary of State may require a residuary body to make payments of such amounts, and at such times, as he may specify to a local authority or a joint board.
- (5) The Secretary of State may require any local authority in the area in which a residuary body operates to meet such proportion of their expenses as he may determine.
- (6) Any expenses incurred by a residuary body shall, in so far as they are not otherwise met, be paid by the Secretary of State out of money provided by Parliament.
- (7) The Secretary of State may direct a residuary body to prepare, within such time as he may specify in the direction, a scheme for their winding up and for the disposal of their property, rights and liabilities.
- (8) Subject to subsection (9) below, where a residuary body have prepared a scheme such as is mentioned in subsection (7) above, the Secretary of State may by order give effect to that scheme, subject to any modifications he considers appropriate, and any such order may—
 - (a) include provision for the disposal, whether by transfer or otherwise, of the body’s property; and
 - (b) contain such supplementary and transitional provision as the Secretary of State thinks necessary or expedient.
- (9) Where a residuary body is wound up in accordance with an order under subsection (8) above sections 8, 9, 10 and 13 of this Act shall apply, with any necessary modifications, to the staff of the residuary body as they apply to the staff of an existing local authority.
- (10) Schedule 3 to this Act has effect in relation to residuary bodies.
- (11) An order under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

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19 Property commission.

- (1) Subject to subsection (2) below and after such consultation, whether before or after the passing of this Act, as he considers appropriate, the Secretary of State may by order establish a property commission for the purpose of—
 - (a) advising authorities on matters relating to property to be transferred from existing local authorities to new authorities;
 - (b) advising the Secretary of State on the general principles on which such property should be transferred; and
 - (c) carrying out such other functions in relation to the transfer of property as may be specified in the order,
 and for the purposes of this section “property” includes property held on trust to which section 16 of this Act applies.
- (2) An order under this section may make provision as to the constitution and membership of the commission, the appointment and removal from office by the Secretary of State of the chairman and members of the commission, the employment of staff and the remuneration and superannuation of the members and staff of the commission.
- (3) The Secretary of State may give directions—
 - (a) to the commission as to the carrying out by them of their functions;
 - (b) as to the area or areas in which the commission are to carry out their functions;
 - (c) as to the procedure to be followed by the commission;
 - (d) for the supplying of information to the commission by any authority; and
 - (e) to any authority—
 - (i) as to the implementation of advice given to them by the commission; and
 - (ii) as to the payment by them of any expenses incurred by the commission in doing anything requested of them by that authority.
- (4) The Secretary of State may by order provide for the winding up of the commission and the disposal of their assets.
- (5) Any expenses incurred by the property commission and not recovered by them from an authority shall be paid by the Secretary of State out of money provided by Parliament.
- (6) An order under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) In this section—

“authority” includes an existing local authority and a new authority;

“existing local authority” includes a joint committee and a joint board but does not include an islands authority; and

“new authority” means any of the authorities constituted under section 2 of this Act (other than Orkney Islands, Shetland Islands and Western Isles) and a joint board.

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