



# Local Government etc. (Scotland) Act 1994

## 1994 CHAPTER 39

### PART I

#### LOCAL GOVERNMENT REORGANISATION

#### CHAPTER 7

#### MISCELLANEOUS

#### 46 Licensing boards

- (1) A council may determine whether their area shall be divided into licensing divisions for the purposes of the Licensing (Scotland) Act 1976.
- (2) Where a determination is made under this section, the council shall forthwith notify the Secretary of State of such determination and cause notice thereof to be published in two successive weeks in one or more newspapers circulating in the area.
- (3) Every council shall, by no later than 31st March 1996, elect the members of the licensing board for—
  - (a) their area; or
  - (b) where a determination has been made under this section, each licensing division of their area.
- (4) Any thing done by any licensing board for any area before 1st April 1996 shall, to the extent that it has effect before that date, have effect after that date as if it had been done by the licensing board for that area (or, as the case may be, the licensing board whose area falls wholly or partly within that area) on that date.
- (5) In this section “council” means a council constituted under section 2 of this Act.

**47 Proceedings in district courts: transitional provisions**

Where proceedings were instituted before 1st April 1996 in any district court and those proceedings have not been completed by that date, then, for the purpose of enabling those proceedings to be continued on and after that date, and for preserving in other respects the continuity of the administration of justice—

- (a) the district court having jurisdiction on and after that date in the area where the proceedings were instituted shall be treated as succeeding to, and being the same court as, the district court in which the proceedings were instituted, and any verdict, sentence, order, complaint, notice, citation, warrant, or other proceedings or document shall have effect accordingly; and
- (b) the clerk of the district court in which the proceedings were instituted shall transfer all records, productions and documents relating to those proceedings to the clerk of the district court treated as succeeding to that court.

**48 Amendment of District Courts (Scotland) Act 1975**

In section 2 of the District Courts (Scotland) Act 1975 (district of, and exercise of jurisdiction by, district court), after subsection (1) there shall be inserted the following subsection—

“(1A) In determining where and when a district court should sit, a local authority shall have regard to the desirability of minimising the expense and inconvenience occasioned to those directly involved, whether as parties or witnesses, in the proceedings before the court.”.

**49 Justices of the peace**

- (1) Any person holding office as justice of the peace for any commission area by virtue of the provisions of section 9(2) or 10(3) of the District Courts (Scotland) Act 1975 immediately before 1st April 1996 shall, on and after that date, hold office as justice of the peace for the commission area in which he resides on that date.
- (2) Any person holding office as justice of the peace for any commission area on and after 1st April 1996 by virtue of the provisions of subsection (1) above shall hold that office as if appointed in accordance with the said section 9(2).
- (3) Where the Secretary of State is satisfied in all the circumstances that it is expedient that any such person as is mentioned in subsection (1) above should hold that office for another commission area, he may so direct; and any such direction shall have effect, and shall be treated for the purposes of the said Act of 1975, as an instrument appointing that person in accordance with the said section 9(2) to hold office for such commission area as is mentioned in the direction.

**50 Stipendiary magistrates**

- (1) Any person who holds office as stipendiary magistrate for any area immediately before 1st April 1996 shall, on that date, become a stipendiary magistrate in the district court having jurisdiction in that area and shall be deemed in all respects to have been appointed by virtue of section 5(1) of the District Courts (Scotland) Act 1975.
- (2) The provisions of sections 8, 9 and 10 of this Act shall apply, subject to any necessary modifications, to the transfer of stipendiary magistrates on 1st April 1996.

## **51 Registration of births, deaths and marriages**

- (1) The Registration of Births, Deaths and Marriages (Scotland) Act 1965 shall be amended in accordance with the provisions of this section.
- (2) For section 5(3) (registration districts and registration authorities) there shall be substituted the following subsection—
  - “(3) For each registration district there shall be a local registration authority which shall be the local authority in whose area the registration office or the principal premises of that office are, immediately before the commencement of section 51 of the Local Government etc. (Scotland) Act 1994, situated.”.
- (3) In section 8 (registration offices)—
  - (a) in subsection (1), after the words “registration office” there shall be inserted the words “which may comprise principal premises and such subordinate premises as they may, with the approval of the Registrar General, consider appropriate”; and
  - (b) at the end there shall be inserted the following subsection—
    - “(6) References in this Act to the registration office shall, unless the context otherwise requires, be construed as including all the premises provided and maintained by a local registration authority as parts of the registration office.”.
- (4) In section 15 (information concerning finding of infant children)—
  - (a) in subsections (1) and (3), for the words “director of social work” there shall be substituted “chief social work officer”; and
  - (b) subsection (4) shall cease to have effect.
- (5) In section 56(1) (interpretation), after the definition of “function” there shall be inserted the following definition—
  - ““local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994;”.

## **52 Tweed Fisheries Commissioners**

- (1) On 1st April 1996 each person holding office as representative commissioner appointed by any of the district councils of Berwickshire, Roxburgh, Ettrick and Lauderdale or Tweeddale under the Tweed Fisheries Act 1969 shall go out of office.
- (2) The function of appointing representatives formerly appointed by the councils mentioned in subsection (1) above shall be transferred to the new council for the Borders.
- (3) In Schedule 1 to the said Act of 1969, for the entries relating to the district councils of Berwickshire, Roxburgh, Ettrick and Lauderdale and Tweeddale there shall be substituted the entry relating to the Borders Council set out in Schedule 6 to this Act.

## **53 Records held by local authorities**

- (1) A local authority shall, in accordance with the provisions of this section, make proper arrangements for the preservation and management of any records which have been—

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- (a) transferred to and vested in them by virtue of an order under section 15 of this Act;
  - (b) created or acquired by them in the exercise of any of their functions; or
  - (c) otherwise placed in their custody,
- and shall, before putting any such arrangements into effect, or making any material change to such arrangements, consult the Keeper of the Records of Scotland, and have regard to any comments which he may make on the proposed arrangements or changes.
- (2) A local authority may dispose of any records which they do not consider to be worthy of preservation.
  - (3) Before entering into any arrangements to which section 58 of this Act or section 56 of the 1973 Act (arrangements for discharge of functions by local authorities) applies with regard to the preservation and management of any records, a local authority shall consult the Keeper.
  - (4) Where a local authority hold records relating to the property or functions of any other local authority, that other authority shall, subject to any arrangements made under section 58 of this Act or section 56 of the 1973 Act by the two authorities—
    - (a) be entitled to free access to, and copies of, any such records; and
    - (b) pay to the local authority holding the records such proportion of the costs incurred by that authority in preserving and managing the records—
      - (i) as the authorities may agree; or
      - (ii) as may, failing such agreement, be determined by the Secretary of State.
  - (5) The Keeper shall be entitled to free access to any records held by a local authority.
  - (6) For the purposes of this section and section 54 of this Act “records” includes charters, deeds, minutes, accounts and other documents, and any other records, of whatever form and in whatever medium, which convey information, but does not include records which are the property of the Registrar General of Births, Deaths and Marriages for Scotland.

#### **54 Use, acquisition and disposal of records**

- (1) A local authority may do anything which appears to them to be appropriate for the purpose of enabling proper use to be made of their records and, without prejudice to the generality of the foregoing, may—
  - (a) make provision for enabling persons, with or without charge and subject to such conditions as the authority may determine, to inspect the records and to make or obtain copies thereof;
  - (b) prepare, or procure or assist in the preparation of, indices and guides to and calendars and summaries of the records;
  - (c) publish, or procure or assist in the publication of, the records or any index or guide to or calendar or summary of the records;
  - (d) hold exhibitions of the records and arrange for the delivery of explanatory lectures, with or without charging for admission to such exhibitions or lectures;
  - (e) direct that the records be temporarily entrusted to other persons for exhibition or study.

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- (2) Nothing in subsection (1) above shall be taken as authorising the doing of any act which infringes copyright or contravenes conditions subject to which records are under the control of an authority.
- (3) A local authority may—
  - (a) acquire by way of purchase records which, or (in the case of a collection) the majority of which, appear to the authority to be of general or local interest;
  - (b) accept the gift of records which or, in the case of a collection, the majority of which appear to the authority to be of general or local interest.
- (4) A local authority may accept the deposit of records—
  - (a) authorised to be deposited with it by any enactment; and
  - (b) which appear to the authority to be of general or local interest.
- (5) In section 200 of the 1973 Act (records)—
  - (a) subsections (1) to (6), (8), (9) and (11)(b) shall cease to have effect; and
  - (b) in subsections (7) and (10)—
    - (i) for the word “local”, in each place where it occurs, there shall be substituted the words “river purification”; and
    - (ii) for the word “authority”, in each place where it occurs, there shall be substituted the word “board”.

## **55 Restriction on disposal of assets and entering into contracts by existing authorities**

- (1) On and after the relevant date, an existing authority shall not, without the consent of the relevant successor authority or, in a case to which subsection (9) below applies, the Secretary of State—
  - (a) without prejudice to section 74 of the 1973 Act (disposal of land), dispose of any land for a consideration exceeding £250,000; or
  - (b) enter into any of the contracts mentioned in subsection (2) below.
- (2) The contracts referred to in subsection (1)(b) above are—
  - (a) contracts—
    - (i) in terms of which the authority incurs a liability to meet capital expenses within the meaning of section 94 of the 1973 Act (capital expenses); and
    - (ii) where the consideration exceeds £2,500,000; and
  - (b) contracts, other than contracts such as are mentioned in sub-paragraph (a)(i) above—
    - (i) the period of which purports to extend beyond 31st March 1996 or is capable of being so extended; and
    - (ii) where the consideration exceeds £250,000.
- (3) The relevant date for the purposes of this section is such date as the Secretary of State may by order made by statutory instrument determine; and different such dates may be so determined in respect of any of the successor authorities mentioned in subsections (4) to (8) below or, in a case to which subsection (9) below applies, the Secretary of State.

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- (4) Subject to subsections (5) to (8) below, the relevant successor authority in relation to any proposed disposal or contract by a regional or district council is—
- (a) in relation to any disposal of land, the new local authority within whose area the land will be situated; and
  - (b) in relation to any other contracts, any new local authority whose area will include the whole or any part of the area of the existing local authority.
- (5) The relevant successor authority in relation to any proposed disposal of relevant property (within the meaning assigned by paragraph (b) of section 91(1) of this Act) or proposed contract in so far as it relates to functions mentioned in that paragraph is, in the case of—
- (a) Lothian, Borders, Fife or Central Region, the East of Scotland Water Authority;
  - (b) Strathclyde or Dumfries and Galloway Region, the West of Scotland Water Authority; and
  - (c) Tayside, Highland or Grampian Region or an Islands Area, the North of Scotland Water Authority.
- (6) The relevant successor authority in relation to any proposed disposal or contract by the Central Scotland Water Development Board is the East of Scotland Water Authority.
- (7) The relevant successor authority in relation to any proposed disposal or contract by a police authority or, where an amalgamation scheme has been made, a joint committee for any existing police area is—
- (a) in the case of each of Fife and Dumfries and Galloway, the police authority for the new police area of the same name; and
  - (b) in the case of each of the police authorities or, as the case may be, joint committees for the areas or combined areas shown in brackets in the first column of the Table in section 21B(3) of the Police (Scotland) Act 1967 (reorganisation of police areas), the joint board for the corresponding combined area shown in that column.
- (8) The relevant successor authority in relation to any proposed disposal or contract by a fire authority or, where an administration scheme has been made, a joint committee, is—
- (a) in the case of each of Fife and Dumfries and Galloway, the fire authority for the new area of the same name; and
  - (b) in the case of each of the fire authorities or, as the case may be, joint committees for the areas or combined areas shown in brackets in the first column of the Table in section 147(4) of the 1973 Act (fire services), the joint board for the corresponding combined area shown in that column.
- (9) Where—
- (a) a disposal of land such as is mentioned in subsection (1)(a) above is of land held or acquired by the authority for the construction or improvement of any road; or
  - (b) a contract such as is mentioned in subsection (2) above is for works for the construction or improvement of any road; and
  - (c) where, in either case, the Secretary of State has given notice to the authority concerned of his intention to make an order under section 12A(1)(a), 12B(1)(a), 12C(1)(b), 12E(1) or 12E(3) of the Roads (Scotland) Act 1984 directing

that a road or proposed road should become a trunk road or that he should be authorised to provide a special road,

the consent required shall, in either case, be that of the Secretary of State.

- (10) The requirement to seek consent imposed by this section shall not apply to—
- (a) any disposal of land in respect of which the consent of the Secretary of State is required under section 12(7) of the Housing (Scotland) Act 1987; and
  - (b) any contract entered into by an existing authority in or in connection with the exercise of the power conferred on them by section 24 of the Local Government Act 1988 (power to provide financial assistance for privately let housing accommodation).
- (11) This section applies to any granting of an option to require an existing authority to make a disposal of land or enter into a contract which would require the consent of a successor authority or the Secretary of State as it applies to such a disposal or contract.
- (12) In this section “existing authority” means a regional or district council, the Central Scotland Water Development Board, any police authority or joint committee for a police force established under the Police (Scotland) Act 1967, any fire authority or joint committee for a fire brigade established in Scotland under the Fire Services Act 1947 and, for the purposes of the matters mentioned in subsection (5) above, includes an islands council.

## **56 Duty of existing authorities and assessors to provide information to new authorities**

- (1) Subject to the provisions of this section, existing local authorities and assessors shall provide new authorities with such information as the latter may reasonably require for the purpose of carrying out, whether before or after 1st April 1996, any of their functions.
- (2) A new authority may not require information to be provided from any existing authority or assessor whose area does not correspond, at least in part, with the area of the new authority.
- (3) An assessor shall not be required under subsection (1) above to provide any information to a new authority which he is not required to provide to an existing authority.
- (4) In this section—
- “assessor” means an assessor appointed under section 116 of the 1973 Act (appointment of assessors);
  - “existing local authority” includes a joint committee and a joint board; and
  - “new authority” means any of the authorities constituted under section 2 of this Act, and includes a joint board.

## **57 Power and duty of existing local authorities to assist new authorities**

- (1) An existing local authority may do anything which in their opinion is appropriate for the purpose of—
- (a) facilitating the transfer of their functions, staff and assets to a new authority; or
  - (b) facilitating the carrying out by a new authority of their functions on and after 1st April 1996.

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- (2) Without prejudice to the generality of subsection (1) above, existing local authorities having functions in relation to any part of the area of a new authority may establish, or the Secretary of State may require them to establish, a committee in the area of that new authority to consider any matter which it is expedient they should consider in order to ensure the effective operation of that authority on and after 1st April 1996.
- (3) Existing local authorities may establish, or the Secretary of State may direct them to establish, a committee in relation to the areas of any group of new authorities to consider any matter which it is expedient they should consider in order to ensure the effective operation of those authorities on and after 1st April 1996.
- (4) A committee established under subsection (2) or (3) above shall consist of such number of representatives of the authorities by whom it is established as may be agreed between them or, in default of such agreement, as may be determined by the Secretary of State.
- (5) The Secretary of State may direct an existing local authority to do anything which in his opinion is appropriate for the purpose of putting a new authority in a position to carry out their functions with effect from 1st April 1996.
- (6) A direction under subsection (5) above—
  - (a) may be made subject to such conditions (for example, as to payment by the new authority) as may be specified in it; and
  - (b) shall be complied with by the authority to which it is made.
- (7) Any expenses incurred by a committee established under subsection (2) or (3) above shall be defrayed by the authorities by whom the committee was established in such proportions respectively as may be agreed amongst or between them or, in default of agreement, as may be determined by the Secretary of State.
- (8) In this section—
 

“existing local authority” includes a joint committee and a joint board; and

“new authority” means any of the authorities constituted under section 2 of this Act, and includes a joint board.

## **58 Further provision as to discharge of functions by authorities**

- (1) Subject to the provisions of this section, a local authority (a “contracting authority”) may agree with any other local authority (a “supplying authority”) that the supplying authority shall carry out for the contracting authority any activity or service which the contracting authority are required to, or may legitimately, carry out.
- (2) An agreement under this section—
  - (a) may provide for activities or services to be carried out by two or more authorities jointly; and
  - (b) may include such terms as to payment as the authorities concerned consider appropriate.
- (3) Anything requiring to be done by a supplying authority under an agreement under this section shall be treated as one of their statutory functions.
- (4) The Secretary of State may by regulations make such provision as he thinks fit in relation to the exercise by local authorities of the power conferred by this section and,



without prejudice to the generality of the foregoing, such regulations may include provision—

- (a) prohibiting or restricting to such extent as may be prescribed the use of the power in relation to such activities or services, or such class or classes of activities or services, as may be so prescribed;
  - (b) specifying, either generally or in relation to such activities or services, or such classes of activities or services, as may be so prescribed, which authorities may enter into agreements under this section.
- (5) This section is without prejudice to any other power under or by virtue of which a local authority may arrange for the carrying out of any of their activities or services by another authority.
- (6) A statutory instrument containing regulations 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 “local authority” includes a residuary body and a joint board.

## **59 Local Acts and instruments**

- (1) Subject to subsection (2) below, any local statutory provision to which this section applies and which is not continued in force by any other provision of this Part of this Act shall—
- (a) notwithstanding the changes of administrative areas and local authorities effected by or under this Part of this Act and, in the case of an instrument made under any enactment, notwithstanding the repeal of that enactment, continue to apply on and after 1st April 1996 to, but only to, the area, things or persons to which or to whom it applies before that date;
  - (b) have effect subject to any necessary modifications and to the modifications made by subsection (3) below;
- but the continuation by this subsection of an instrument made under any enactment shall not be construed as prejudicing any power to vary or revoke the instrument which is exercisable apart from this subsection.
- (2) Subsection (1) above shall have effect subject to the provisions of—
- (a) subsection (6) below;
  - (b) this Part of this Act;
  - (c) any Act passed after this Act and before 1st April 1996; and
  - (d) any order made under—
    - (i) section 181 of this Act; or
    - (ii) the following provisions of this section.
- (3) Any local statutory provision to which this section applies and which relates to functions exercisable by an existing local authority of any description by virtue of any public general enactment shall have effect as if for any reference to the authority by whom the functions are exercised immediately before 1st April 1996 there were substituted a reference to the authority by whom those functions are exercisable on and after that date.
- (4) Subsection (3) above shall not come into force until 1st April 1996 and shall have effect subject to any provision to the contrary made by, or by any instrument made under, this Part of this Act and, without prejudice to the foregoing, the Secretary

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of State may by order provide for the exercise of functions conferred by any local statutory provision to which this section applies and exclude the operation of that subsection where it would otherwise conflict with any provision of the order.

- (5) Where any local statutory provision is continued in force in any area by subsection (1) above or is amended or modified in its application to any area by an order under section 181 of this Act, the Secretary of State may by that order, or in the case of a provision continued as aforesaid, by an order under this subsection—
- (a) extend the provision throughout the new local government area in which it is continued in force;
  - (b) provide that that provision as so continued, amended, modified or extended shall have effect in that area to the exclusion of any enactment for corresponding purposes, including any enactment contained in or applied by this Act;
  - (c) make such modifications of any such enactment in its application to that area as will secure that the enactment will operate harmoniously with the said provision in that area;
  - (d) repeal or revoke any local statutory provision to which this section applies and which appears to the Secretary of State to have become spent, obsolete or unnecessary or to have been substantially superseded by any enactment or instrument which applies or may be applied to the area, persons or things to which or to whom that provision applies;
  - (e) transfer to any local authority appearing to the Secretary of State to be appropriate any functions of an existing local authority under a local statutory provision to which this section applies which are not to become functions of some other authority under any provisions of this Act except section 181 of this Act and this section, or under any other instrument made under this Act, being functions exercisable by any existing local authority abolished by this Act;
  - (f) without prejudice to paragraph (e) above, make such modifications of any local statutory provision to which this section applies in its application to any new local government area as appear to the Secretary of State to be expedient.
- (6) All local statutory provisions to which this subsection applies shall cease to have effect on 31st December 1999, but the Secretary of State may—
- (a) by order exempt any such provision from the foregoing provision of this subsection;
  - (b) from time to time by order postpone the date on which any local statutory provision applying to the whole or part of any local government area is to cease to have effect under this subsection.
- (7) An order under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (8) This section applies to any local statutory provision in force immediately before 1st April 1996 and not expressly repealed or revoked by this Act, and subsection (6) above applies to the following local statutory provisions—
- (a) a provision of a local Act, the Bill for which was promoted by a local authority;
  - (b) a provision of an Act confirming a provisional order made on the application of a local authority;
  - (c) a provision of an order made on such an application which was subject to special parliamentary procedure;

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- (d) any byelaw; and
- (e) any management rule made under section 112 of the Civic Government (Scotland) Act 1982 (management rules),  
not being a provision relating to a statutory undertaking.

(9) In this section—

“existing local authority” means a regional or district council;

“local authority” means an existing local authority, a joint committee, an authority constituted under section 2 of this Act, a joint board and a residuary body; and, for the purposes of subsection (6) above, includes any local authority in existence prior to 16th May 1975;

“local statutory provision” includes—

- (a) a provision of a public general Act passed with respect only to the whole or part of an existing local government area;
- (b) a provision of an instrument made under such a public general Act;
- (c) an instrument in the nature of a local statutory provision made under any other public general Act;
- (d) a provision of a local Act or a provision of an instrument made under any such Act;
- (e) a provision of an Act confirming a provisional order;
- (f) a provision of an order which was subject to special parliamentary procedure;
- (g) any byelaw; and
- (h) any management rule made under section 112 of the Civic Government (Scotland) Act 1982 (management rules),

but does not include any enactment or instrument in so far as that enactment or instrument relates to functions mentioned in section 91(1)(b) of this Act nor any order under section 6 of the 1975 Act; and

“statutory undertaking” means any railway, light railway, tramway, road transport, water transport, canal, inland navigation, ferry, dock, harbour, pier or lighthouse undertaking, any market undertaking or any undertaking for the supply of electricity, gas, hydraulic power or district heating.

## **60 Applications to sheriff in cases of difficulty**

Sections 231 (applications to sheriff in cases of difficulty) and 232 (applications to court) of the 1973 Act shall apply in relation to a difficulty arising in the carrying out of this Part of this Act as they apply in relation to a difficulty arising in the carrying out of that Act.

## **61 Interpretation of Part I**

In this Part of this Act, unless the context otherwise requires—

“existing local authority” means a regional, islands or district council;

“records” shall be construed in accordance with section 53 of this Act;

“the 1972 Act” means the Town and Country Planning (Scotland) Act 1972;

“the 1992 Act” means the Local Government Finance Act 1992,

and expressions used in this Part of this Act and in the 1973 Act shall have the same meanings in this Part as in that Act.