

LOCAL GOVERNMENT IN SCOTLAND ACT 2003

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Executive in order to assist the reader of the Act. They do not form part of the Act and have not been endorsed by the Parliament.
2. The Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

BACKGROUND

3. The Local Government in Scotland Act 2003 is intended to enable the delivery of public services which better meet the expectations of those who pay for and use them.
4. The Act contains provisions in relation to Best Value within local authorities; local authority trading powers; the Community Planning process; the promotion and improvement of well-being; and certain miscellaneous provisions concerned with local government. The provisions in the Act will in the main impact most directly on local authorities but particular aspects of the Act also relate to certain other public bodies.
5. The Local Government in Scotland Act 2003 carries forward proposals for legislative change, which were set out and discussed in a number of different documents. These documents include the *Report of the Accounts Commission on Local Government and the Scottish Parliament – The Scottish Executive’s Response* published in September 1999; the final report of the Best Value Task Force published in December 1999; *Best Value in Local Government: Next Steps* published in June 2000; *A power of Community Initiative, Community Planning, and Political Restrictions on council employees* published in November 2000; and *Local Government Bill – Outline of Proposals* published in December 2001.

THE ACT – AN OVERVIEW

6. The Act provides:
 - a duty to secure Best Value in local government service provision;
 - an extension of the Accounts Commission for Scotland’s powers to hold hearings and publish findings so that they cover issues relating to Best Value and Community Planning;
 - the provision of a Ministerial intervention power for continued or extraordinary statutory failure in Best Value or a significant misuse of the power of well being;
 - amendments to constraints on local authority trading activity, with the repeal of all existing legislation relating to compulsory competitive tendering;

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

- a statutory basis for public performance reporting and arrangements to improve accountability;
 - a statutory basis for Community Planning to ensure long-term commitment to effective partnership working with communities and between local authorities and other key bodies and organisations;
 - a power of well-being to enable local authorities to work in a more innovative and creative way in responding to the needs of their communities; and
 - a vehicle to progress a number of miscellaneous provisions which relate to local government matters.
7. The Act is in the following parts:
- Part 1: Best Value and Accountability
 - Part 2: Community Planning
 - Part 3: Power to advance Well-being
 - Part 4: Enforcement and Scrutiny
 - Part 5: Rating and council tax
 - Part 6: Waste Management
 - Part 7: Finance
 - Part 8: Miscellaneous
 - Part 9: General

THE ACT – SECTION BY SECTION

Part 1 - Best Value and Accountability

8. **Part 1** provides a new performance management and accountability regime for local authorities. For the purposes of Part 1 “local authority” is defined by section 61 so as to include all Scottish councils and the Strathclyde Passenger Transport Authority. By virtue of section 14, Part 1 also applies to committees, joint committees and joint boards where the members are appointed by local authorities and to charities for which the trustees are local authorities or their members. It puts local authorities under a duty of Best Value and requires them to have regard to guidance about what that may mean. It extends the powers of the Accounts Commission to encourage failures in Best Value to be identified and addressed. It provides more freedoms and flexibilities for local authorities over commercial and trading activity and removes the requirement to submit specified activities to Compulsory Competitive Tendering (CCT). It provides a new framework for performance reporting to local authority stakeholders, which leaves decisions about the ways and means of publication to be decided at local level.

Section 1 – Local Authorities’ duty to secure best value

9. **Section 1** places all Scottish local authorities (as defined by section 61) under a duty to secure Best Value and describes Best Value in terms of the continuous improvement of performance of functions. This statutory definition builds on the working definitions used by local authorities, the Accounts Commission and HM Inspectorates since 1997 on the basis of advice provided by the Best Value Task Force. The term “functions” has the meaning given to it by section 126 of the [Scotland Act 1998 \(c.46\)](#) by virtue of the [Scotland Act 1998 \(Transitory and Transitional Provisions\) \(Publication and Interpretation etc of Acts of the Scottish Parliament\) Order 1999 \(S.I. 1999/1379\)](#). It includes therefore both the powers and duties of local authorities.

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

10. *Subsection (3)* provides that in securing continuous improvement in a particular service local authorities will be expected to maintain a balance between the quality of the outcome of the service delivered and the cost of that service. *Subsection (4)* provides that in maintaining this balance between quality and cost local authorities will be expected to consider the efficiency, effectiveness, and economy of their actions and how well those actions comply with the requirements of equal opportunities legislation.
11. *Subsection (5)* requires that action taken by a local authority in furtherance of the duty of Best Value should contribute to the achievement of sustainable development. *Subsection (6)* is intended to ensure that when local authorities measure improvement in their performance they consider improvement in outcomes as well as improvements in processes.

Section 2 – Considerations bearing on performance of duty under section 1

12. **Section 2** requires local authorities to have regard to any guidance issued by the Scottish Ministers to support the duty of Best Value. Prior to issuing guidance the Scottish Ministers are required to consult associations of local authorities and whomever else they think appropriate.
13. Unless they conflict with the guidance produced by the Scottish Ministers, local authorities will also be expected to have regard to arrangements which are generally accepted within Scotland as constituting proper arrangements for securing Best Value, because they are described as such in commonly accepted or endorsed guidance or Codes of Practice.

Section 3 – Action by Accounts Commission following report by Controller of Audit

14. **Section 3** sets out what the Accounts Commission for Scotland (“the Accounts Commission”) can do once it has received a report from the Controller of Audit (“the Controller”) made under section 102 of the Local Government (Scotland) Act 1973 (“the 1973 Act”). The Accounts Commission may require the Controller to look into a specific issue or to look at an issue in more detail. In circumstances where it thinks it appropriate the Accounts Commission may hold a public hearing on the issue, before stating findings; state findings without holding a hearing; or decide to take no further action.

Section 4 – Hearings under section 3 above

15. **Section 4** makes new provision for the procedures to be followed in a hearing held under section 3. The section makes cross-reference to provisions contained in the 1973 Act (as amended in particular by the [Ethical Standards in Public Life etc. \(Scotland\) Act 2000 \(asp 7\)](#) (“the 2000 Act”). These provisions ensure that the Accounts Commission has the right to determine the procedure at any hearing but that certain basic requirements must be met.
16. These include that the hearing should be conducted (if appropriate) in public, that no fewer than three members of the Accounts Commission should attend, and that any local authority or individual mentioned in the report or likely to be mentioned during the hearing has the right to be heard at the hearing. The Accounts Commission may require individual officers or members of an authority to attend a hearing, under pain of a level 3 fine, but may pay their expenses if it thinks it appropriate.
17. At the conclusion of the hearing the Accounts Commission must prepare written findings to be copied to the relevant local authorities, any member or officer named in the report that initiated proceedings and any other parties the Accounts Commission thinks fit. The findings issued at the conclusion of a hearing can include recommendations made either direct to the relevant local authority or to the Scottish Ministers.

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

18. As a consequence of provision made by sections 3 and 4, *subsection (6)* repeals those subsections of the 1973 Act that have been superseded.

Section 5 – Action by local authorities on receipt of findings

19. **Section 5** simplifies the actions a local authority (or group of authorities) will be expected to take after taking receipt of findings from the Accounts Commission. Reference is again made to the provisions of the 1973 Act (as amended), which provides for the authority to advertise the findings and the time and date of a public meeting at which they may be discussed. Local authorities will be expected to consider any findings issued by the Accounts Commission at a previously advertised meeting of the authority within three months of receiving the findings (unless the Accounts Commission specifies some other time-scale). The local authority will be expected to notify the Accounts Commission of its proposed actions in response to their findings. A summary of this response should be published in a local newspaper.
20. As a consequence of provision made by section 5, *subsection (2)* repeals those sections of the **Local Government Act 1992 (c.19)** that have been superseded.

Section 6 – Accounts Commission’s studies and recommendations to include aspects of securing best value

21. **Section 6** amends the 1973 Act to ensure that the Accounts Commission’s power to undertake studies into the economy, efficiency, and effectiveness of local authorities’ activities (either singly or in groups) is extended also to allow the Accounts Commission to undertake studies into the extent to which they have secured Best Value.

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

22. **Section 7** amends section 17(5) of the **Local Government Act 1988 (c.9)** to allow local authorities to take into consideration issues previously excluded from commercial contractual negotiations which relate to employment practices. *Subsection (2)* provides that these issues may only be considered in circumstances where they are relevant to (a) the local authority securing Best Value; (b) the local authority being satisfied that a contractual partner will be able to comply with the terms specified in the contract; and (c) to the extent that staff transfers and other issues relating to the Transfer of Undertakings (Protection of Employment) Regulations 1981 are concerned under the contract.

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

23. **Section 11** amends the **Local Authorities (Goods and Services) Act 1970 (c.39)** (“the 1970 Act”) to provide a new framework for the provision of goods and services by local authorities to individuals and other organisations.
24. Goods and services can be provided under a trading agreement to anyone the local authority chooses, although the well being of the area or persons within the area must be considered. *Subsection (1M)* of the 1970 Act provides that before entering into any agreement under subsection (1) of the 1970 Act, local authorities should have regard to whether doing so will be likely to promote or improve the well-being of its area, persons within that area or both. In this subsection “well-being” has the same meaning as it has in section 21.
25. Where the agreement is with another local authority the local authority can build its capacity for the purpose of supporting the agreement and the income it makes is not subject to restriction.

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

26. Where the agreement is with other public authorities or bodies, contractual partners where the provision is intended to support services provided to the authority through a pre-existing contract; or to bodies serving a public purpose where the provision is to support that public purpose, the local authority must trade from its own surplus capacity in staff services, property and facilities, although the income it makes is not subject to restriction.
27. Where the agreement is with other trading partners than those described above, the local authority must trade from its own surplus capacity in staff services, property and facilities, and the income it makes will be subject to financial limits set by the Scottish Ministers as provided by *subsection (1D(b))*. *Subsections (1D) and (1E)* provide that the financial limits also apply to dividend income and profit share income derived from a local authority's interest in a company which has trading agreements to which, if the local authority itself were a party, the financial limits would apply.
28. Such limits, which, according to *subsections (1F) and (1G)* of the 1970 Act, can be set to cover all trading operations or different amounts for different trading operations, will be set by order after consultation and subject to annulment in pursuance of a resolution of the Scottish Parliament. The Scottish Ministers will have the power to approve exclusion from the relevant limit of income generated by a particular agreement entered into an authority. It is expected that such approvals will be offered only according to clear and explicit criteria.

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

29. **Section 9** provides that a local authority may enter into agreements with any person for the construction or maintenance of any buildings or works. Such agreements are governed by any regulations made under the power provided at *subsection (2)*.
30. *Subsection (3)* provides that specific reference can be made in the regulations issued under this section to any code of practice or other document for the purposes of extending the scope of the regulations to cover such codes or documents. This means that such codes or documents will in effect have the same legal standing as the regulations.
31. *Subsections (6) and (7)* provide that such regulations shall be made after consultation and are subject to annulment in pursuance of a resolution of the Scottish Parliament.

Section 10 – Trading operations and accounts

32. **Section 10** provides that where proper accounting practice (as specified in section 12) states that a local authority should keep and publish a trading account for an activity, that activity should be budgeted for so that over a three year period on a rolling basis the revenue of the activity at least equals the expenditure.

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

33. **Section 11** amends section 74 of the 1973 Act to remove the existing Ministerial consent regime for circumstances in which local authorities seek to sell or otherwise dispose of land and associated assets at less than the best available price. The section provides the Scottish Ministers with a power to issue regulations on this issue and sets out the basic conditions that those regulations will cover.
34. *Subsections (2G) and (2H)* provide that such regulations shall be made after consultation and subject to annulment in pursuance of a resolution of the Scottish Parliament.

Section 12 – Proper accounting practice

35. **Section 12(1)** places local authorities under a duty to observe proper accounting practice. *Subsection (2)* specifies the sources, statutory and otherwise, to which local

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

authorities should have regard in fulfilling their duty under the section. *Subsection (3)* indicates how local authorities should set out to resolve any conflict between these sources.

Section 13 – Publication by local authorities of information about finance and performance

36. *Section 13* places local authorities under a duty to make whatever arrangements are necessary to report publicly on their performance. As with the duty of Best Value, this duty is intended to accommodate all of an authority's functions. Although it is expected that the reporting of performance will be proportionate to the public importance of and public interest in such functions, *subsection (2)* makes clear that in the first instance it is for individual authorities to decide how best to fulfil the basic duty; this includes issues such as when and to whom any report on performance should be made.
37. *Subsections (7) and (8)* provide that the Scottish Ministers may issue guidance about how local authorities should discharge their obligations under this section, after consultation, and *subsections (3) and (4)* specify that the Scottish Ministers may issue regulations, again after consultation and subject annulment by resolution of the Scottish Parliament. It is expected that such regulations will provide for the publication of information which it is considered to be of particular importance to place in the public domain. *Subsection (6)* outlines some of the basic issues that may be dealt with in such regulations.

Section 14 – Application of this Part to other bodies

38. *Section 14* applies Part 1 of the Act to other bodies such as joint committees and joint boards whose members are appointed by local authorities.

Part 2 – Community Planning

Section 15 – Community Planning

39. This section provides a statutory basis for the Community Planning process and relates to local authorities (as defined in section 61(c)(ii)).
40. *Subsection (1)* describes the Community Planning process as one in which the public services provided in a local authority area must be planned and provided after consultation with community bodies and other public bodies responsible for providing those services, and with the on-going co-operation among those bodies. This section requires local authorities to initiate maintain and facilitate such a process in their area and they have responsibility to determine the means of consultation and co-operation.
41. In *subsection (2)* local authorities are further required to invite and encourage all other public bodies in their area, and appropriate community bodies, to participate in Community Planning.
42. *Subsection (3)* makes provision where two or more local authorities jointly deliver a service. Where such an approach is taken, the local authorities involved may fulfil their duty of Community Planning jointly.

Section 16 – Community Planning: further provision

43. This section concerns the participation of the local authority and other bodies in the Community Planning process.
44. *Subsection (1)* requires local authorities; Health Boards; joint police boards; chief constables; Scottish Enterprise; Highlands and Islands Enterprise, Strathclyde Passenger Transport Authority; and Joint Fire Boards to participate in Community Planning.

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

45. *Subsection (2)* requires those listed in section 16(1) to assist the local authority in its initiation, maintenance and facilitation role for Community Planning.
46. *Subsection (3)* provides that the Scottish Ministers may, by order, modify the list of eligible bodies with a duty to engage in Community Planning by adding or deleting a body, person or office-holder. *Subsection (4)* describes the categories of body etc that may be added to the list. *Subsection (5)* provides that the Scottish Ministers may, in an order made under subsection (3), specify, in relation to the body concerned, the geographical area or areas in which the duty of Community Planning may be exercised and, in doing so, allows for the duty to be modified. *Subsection (6)* requires the Scottish Ministers, prior to exercising the power in subsection (5), to consult the body concerned and each local authority in the area of which the body provides services. The same consultation is required where it is proposed to remove a body from this section.
47. *Subsection (8)* requires the Scottish Ministers to promote and encourage Community Planning when discharging any function which might affect Community Planning, or those that must, or might, participate in it or that are participating in it.

Section 17 – Reports and information

48. This section requires a local authority to publish reports on how it has implemented its duty of Community Planning under section 15, on what has been done by way of Community Planning in its area and what the results of that were and what action has been taken to comply with section 59 (relating to equal opportunities requirements). It is for a local authority to determine what form such reports should take and how often they should be published, however, such reports shall include information about the improvement in outcome of Community Planning participants. This section also requires a local authority to provide to the Scottish Ministers, reports or other specified information about Community Planning in its area if so required by the Scottish Ministers. This section also requires that those participating in Community Planning must provide such information as the local authority may reasonably require in order for it to do so.

Section 18 – Guidance

49. This section requires those participating in Community Planning to have regard to any guidance given by the Scottish Ministers about Community Planning. A requirement is also placed on the Scottish Ministers to consult before issuing such guidance.

Section 19 – Establishment of corporate bodies to co-ordinate and further Community Planning etc.

50. This section provides the Scottish Ministers with a power to establish corporate bodies to co-ordinate and further Community Planning by way of an order.
51. *Subsection (1)* establishes that such an order would be made following application by the local authority with one or more of those participating in Community Planning in its area and consideration of a report on the matters specified in subsection (2)
52. *Subsection (2)* details the matters which should be included in the report referred to in subsection (1) including the outcome of consultation and expression of the functions a Community Planning Partnership would want to carry out.
53. *Subsection (3)* details matters on which provision may be included in the order.
54. *Subsections (4) to (7)* concern the specification of functions which a body corporate may discharge. *Subsection (4)* allows a function, which may be specified in an enactment as the function of another body, to be discharged by the body corporate.

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.
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

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

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.

Part 4 – Enforcement and Scrutiny

Section 23 – Enforcement: preliminary notice

68. [Section 23](#) sets out the circumstances in which the Scottish Ministers are allowed to act to enforce a local authority's obligations under sections 1, 13, 15, and 17 and the preliminary procedure that must be followed.
69. *Subsection (1)* specifies the procedure to be followed after a recommendation has been made to the Scottish Ministers by the Accounts Commission under the powers provided under section 103D of the 1973 Act. In such circumstances, before issuing a preliminary notice, the Scottish Ministers must take the view that that a local authority is failing to comply with its obligations under sections 1, 13, 15, or 17, and that giving the local authority an enforcement direction is justified in such circumstances.
70. *Subsection (2)* specifies the procedure to be followed by the Scottish Ministers in circumstances where no recommendation has been made by the Accounts Commission. In such circumstances, before issuing a preliminary notice, the Scottish Ministers must satisfy themselves that a local authority is failing to comply with its duty under section 1 (best value), and that giving the local authority an enforcement notice is justified to protect the public interest from substantial harm.
71. If the conditions in *subsections (1) and (2)* are met, the Scottish Ministers may serve a preliminary written notice on that authority. *Subsection (3)* provides that this notice should inform the authority that in the Scottish Ministers' opinion the criteria set out above apply and asks for a response. The response may be to argue that the case does not meet the criteria, or that although the preliminary notice is accurate, there are persuasive reasons why further intervention is not appropriate.

Section 24 – Enforcement directions

72. [Section 24](#) provides the Scottish Ministers with the power to direct a local authority to take action to ensure that it complies with its obligations under sections 1, 13, 15 and 17. *Subsection (1)* provides that it is only after considering the local authority's response to the preliminary notice, or after the deadline for offering such a response has expired that the Scottish Ministers will have the power to issue an enforcement direction. Such a direction must be subsequent to the preliminary notice described in section 23, but does not have to be made. *Subsection (2)* provides that the Scottish Ministers may specify in the direction the action required of the local authority to remedy or prevent the recurrence of its failure to comply with its obligations. *Subsection (3)* allows the Scottish Ministers to place conditions on the continued exercise of certain of the local authority's functions. The Scottish Ministers may subsequently amend the direction without having to repeat the preliminary notice procedure described in section 23, and may revoke the direction at any time. *Subsection (4)* provides that the direction may include a direction for the local authority to rectify inaccuracies in its financial accounts.
73. *Subsection (8)* places local authorities under a duty to follow any direction made to them by the Scottish Ministers.

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

74. *Subsection (9)* provides that in addition to or in place of any enforcement direction the Scottish Ministers may make recommendations to any persons they think appropriate. Such recommendations could be made, for example, to the local authority or to any inspection or regulatory body who may have an interest.
75. *Subsection (10)* provides that if the Scottish Ministers use their power to direct (or to vary or revoke an enforcement direction) then they must prepare a report on that use and lay any such report before the Scottish Parliament.

Section 25 – Scrutiny of local authorities’ police and fire functions

76. This section provides that inspectors of both constabulary and fire services may inspect police and fire authorities and joint boards respectively for their compliance with the duties set out in sections 1, 13, 15, 16, 17 and 20 (duties under best value, Community Planning and power of well-being). In addition inspectors may report to the Scottish Ministers on any matter arising out of such inspections.

Section 26 – Excess of power: preliminary notice

77. *Section 26* sets out the circumstances in which the Scottish Ministers are allowed to act to enforce action after they are satisfied that a local authority has significantly exceeded its power to advance well-being and where they consider that enforcement is justified.
78. In such circumstances, the Scottish Ministers may serve a preliminary written notice on that authority. *Subsection (2)* provides that this notice should inform the authority that in the Scottish Ministers’ opinion the circumstances set out in *subsection (1)* have occurred. The Scottish Ministers will require a response, which may be to argue that the case does not meet the criteria, and in this case such a response will need to be justified. Alternatively the response will need to give reasons why, even though the preliminary notice is accurate, the local authority considers further intervention is not appropriate. *Subsection (3)* provides that it is only after considering this response, or after the deadline for offering such a response has expired, that the Scottish Ministers will have the power to issue an enforcement direction as provided in section 27.

Section 27 – Excess of power: enforcement

79. *Section 25* provides the Scottish Ministers with the power to direct a local authority to take specified action to remedy or prevent the recurrence of its significant excess of the power. Such a direction must be subsequent to the preliminary notice described in section 24, but does not have to be made. *Subsection (2)* provides that the Scottish Ministers may place conditions on the continued exercise of certain of the local authority’s functions. The Scottish Ministers may subsequently amend the direction without having to repeat the preliminary notice procedure described in section 24, and may revoke the direction at any time.
80. *Subsection (7)* placed local authorities under a duty to follow any direction made to them by the Scottish Ministers.
81. *Subsection (8)* provides that if the Scottish Ministers use their power to direct (or to vary or revoke an enforcement direction) then they must prepare a report on that use and lay any such report before the Scottish Parliament.

Part 5 – Rating and council tax

Section 28 – Rate Relief on former agricultural premises

82. This section establishes, with effect from 1 April 2003, a 50 per cent mandatory rate relief scheme for lands and buildings used for non-agricultural purposes on what had previously been agricultural lands and buildings. The section also gives local authorities a discretionary power to increase the relief to 100 per cent. This section sets out the

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

conditions that the lands and heritages must meet if they are to qualify for the 50 per cent mandatory rate relief.

83. This section also places a 5 year limit on the relief from the date the provision comes into effect. It also gives the Scottish Ministers power to extend the life of the scheme for a further period or periods and if the period is extended, limits the mandatory relief for lands and heritages that include land and buildings already qualifying for relief, to a 5 year period from the date this provision comes into effect.
84. The mandatory relief described above will not be available to stud farms, which already benefit from an existing concession that reduces their rateable value. Under existing legislation, local authorities have a discretionary power to increase rate relief to 100 per cent. Stud farms newly established on or after 1 April 2003 will be able to qualify for this discretionary relief by virtue of section 28. However, this will be subject to the rateable value of the lands and heritages occupied by the stud farm, shown in the valuation roll at the beginning of the financial year, not being more than the amount prescribed by the Scottish Ministers.

Section 29 – Rate relief for food stores in rural settlements

85. This section extends 50 per cent mandatory rate relief, currently only available to the sole village general store and post office under the rural (village shop) rate relief scheme, to qualifying food stores. This section defines a qualifying food store as one that wholly or mainly sells food on a retail basis for human consumption. The supply of confectionery and of hot food in the course of catering is excluded. The amendments made by this section have effect from 1 April 2003.

Section 30 – Derating of automatic telling machine sites

86. This section provides that for any financial year beginning on or after 1 April 2003, the sites of automatic telling machine which are within a settlement identified in a rating authority's rural settlement list shall not be entered in the valuation roll. This provision does not apply to the sites of automatic telling machines which are located within buildings occupied by a bank or a building society which provides other services.

Section 31 – Derating of certain buildings used in connection with agricultural operations

87. This section amends section 14 of the [Local Government \(Financial Provisions\) \(Scotland\) Act 1963 \(c.12\)](#) to further extend the current exemption from rates available to certain buildings used in connection with agricultural operations to reflect modern farming practices so that where farmers work on other agricultural land, perhaps on a share or contract basis, or through the pooling of resources or machinery, the exemption will apply. This amendments made by this section will have effect from 1 April 2003.

Section 32 – Power to combine lands and heritages situated in more than one valuation area

88. This section provides the Scottish Ministers with new order making powers to put in place procedures which will assist the Scottish Assessors in carrying out a conventional valuation of those industries which currently have their rateable value prescribed by order in as efficient and effective a manner as possible. This would be at the next revaluation in 2005 should the Scottish Ministers decide to return the prescribed industries to conventional valuation. The 'prescribed' industries are electricity, gas, water, rail, train operating companies and large docks and harbours. These industries currently have no right of appeal against the valuation. The intention to return the prescribed industries to conventional valuation is currently the subject of a consultation exercise. "*Non-domestic rates: Returning Prescribed Industries to Conventional Valuation - A consultation paper*" was issued on 18 December 2002 and the closing date for comments is 13 March 2003.

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

89. The Scottish Ministers may provide by order that a single Assessor can be appointed to value an industry as a whole. This "designated" Assessor would have the same powers of entry and right to request information throughout Scotland as the Assessor currently has within the Assessor's own valuation authority area. The Scottish Ministers may also provide by order that the valuation figure for each industry can be entered in one valuation roll or apportioned amongst valuation rolls. The Scottish Ministers may also provide by order that the Valuation Appeal Committee within the "designated" Assessor's own valuation authority area can hear and determine appeal and complaints under the Valuation Acts in relation to the valuation of these industries. Before making any such orders the Scottish Ministers are required to consult with such association of local authorities and other such persons, as they think appropriate.

Section 33 - Council tax: discount for unoccupied dwellings

90. This section provides the Scottish Ministers with regulation making powers in relation to the setting of the council tax on second and long-term empty homes. The powers will enable the regulations, which must be approved in draft by a resolution of the Scottish Parliament, to cover a wide number of outcomes.

Part 6 – Waste Management

Section 34 – Integrated waste management plans

91. Section 34 inserts several new sections after section 44 of the [Environmental Protection Act 1990 \(c.43\)](#). References to section numbers below are to the new sections of the 1990 Act.

44ZA - Duty to prepare integrated waste management plan

92. This section outlines the duty of the local authorities to prepare an integrated waste management plan and submit it to the Scottish Ministers for approval. It describes the role of the integrated waste management plans, and gives the Scottish Ministers the power to issue directions as to their content, including the setting of performance targets and the requirement to set out plans for co-operation with other local authorities. The Scottish Ministers are given the power to direct the timescale by which the integrated waste management plans have to be prepared and submitted and the period they will cover. Local authorities, when preparing the integrated waste management plan, will have regard to such matters as the Scottish Ministers may direct. National Waste Strategy in this context incorporates associated documents such as Area Waste Plans and National Waste Plans.

44ZB – Approval of integrated waste management plan

93. This section sets out the procedures for the approval of integrated waste management plans by the Scottish Ministers. When approval is not given to a plan the Scottish Ministers shall notify the local authority in writing and request them to outline and submit a new plan. The Scottish Ministers may also make modifications to the submitted plans and provide written approval and copies of any approved plan and send a copy to SEPA. The local authority shall make arrangements to allow any person to inspect their integrated waste management plan or request copies of it.

44ZC – Implementation of integrated waste management plan

94. This section gives local authorities the duty to endeavour to carry out their waste management functions in accordance with its approved integrated waste management plan, and if requested to do so by the Scottish Ministers, to provide a statement of whether they are doing so. The Scottish Ministers are given the power to direct local authorities as to the information to be provided in that statement, and in particular on

progress towards meeting performance targets. The Scottish Ministers may also require explanations as to why performance targets have not been met.

44ZD – Modification of integrated waste management plan

95. This section sets out provisions for modifications to integrated waste management plans. Modifications can be proposed by the local authority, or required by the Scottish Ministers. The provisions of section 44ZA to 44ZD apply to modified plans as they do to the original plan prepared under section 44AZ(1).

Part 7 – Finance

Section 35 – Capital expenditure limits

96. This section places local authorities under a duty to manage their own capital expenditure. *Subsection (2)* provides that in so doing local authorities should comply with any regulations issued by the Scottish Ministers. *Subsection (3)* describes what such regulations might cover, such as requirements to determine, review, report on and publish information about capital expenditure. *Subsection (4)* ensures that local authorities are obliged to comply with any relevant codes of practice referred to in the regulations.

Section 36 – Imposition of capital expenditure limits

97. This section provides that the Scottish Ministers may by order determine maximum limits on how much local authorities (and, by direction, a particular local authority) can allocate to capital expenditure in a specified period. Such orders or directions can be used to specify different limits for different kinds of capital expenditure.
98. *Subsection (4)* provides that as soon as practicable after making any order or direction under this section the Scottish Ministers must make a report to the Scottish Parliament on why they issued such an order (or direction) and the predicted effect of any such order (or direction).

Section 37 – Capital grants

99. **Section 37** provides that the Scottish Ministers may also make grants to local authorities for use as capital expenditure and that in doing so, they may attach conditions to the grants (including conditions on repayment of such grants).

Section 38 – Scottish Ministers’ power to pay off loans made by local authorities

100. **Section 38** provides that the Scottish Ministers may make payments direct to the Public Works Loans Board or any other person to reduce or extinguish a loan previously made to a local authority for the purposes of capital expenditure.
101. *Subsection (2)* provides that after making any such payment under this section the Scottish Ministers must lay a report before the Scottish Parliament outlining their reasons for doing so.

Section 39 – Provisions supplementary to section 35 to 38

102. This section provides a definition of capital expenditure, which includes a reference to the definition of “proper accounting practice” in section 12. It provides that the new arrangements in sections 35 to 38 apply to those bodies within the audit remit of the Accounts Commission (as specified by section 106 (1)(b) of the 1973 Act). The Scottish Ministers may also apply sections 35 to 38 by order to any other persons they think fit, if it is on the grounds that such persons have functions similar to those of local authorities.

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

103. *Subsections (5) and (6)* provide that regulations and orders under sections 35 or 39, shall be made after consultation and subject to Parliamentary approval. **Section 40 – Power of local authorities to invest money**

Section 40 Power of local authorities to invest money

104. This section provides that local authorities may invest money in accordance with regulations made by the Scottish Ministers. Such regulations will specify the nature and scope of investment by local authorities; for example, by specifying the type of investment that both can and cannot be made by local authorities and specifying any relevant code of practice or other document that should be followed in relation to such investment. These regulations are expected to disapply such investment from previous statutory ties such as to the **Trustee Investments Act 1961 (c.62)**.

Section 41 – Establishment of further local authority funds other than general fund: setting of council tax

105. **Section 41** amends section 93 of the 1973 Act to enable the Scottish Ministers to define financial liabilities and provisions that local authorities can identify in reserves, separate from their General Fund accounts. It also amends section 93 of the **Local Government Finance Act 1992 (c.14)** to allow the Scottish Ministers to require that these liabilities and provisions are ignored by local authorities in setting their annual council tax levels.

Part 8 – Miscellaneous

Section 42 – Paid time off for councillors not to be a political donation

106. Where any salary is paid to an employee by an employer in respect of time off taken in order to undertake duties as a local councillor, this section ensures that the value of the salary is not classified as a political donation under Schedule 7 to the **Political Parties, Elections and Referendums Act 2000 (c.41)**.
107. The time off for which pay will not count as a political donation is time off for a widely defined range of duties, including the doing of anything for carrying out the functions of the council to which a councillor has been elected and the doing of anything for carrying out any functions of another council where that other council has delegated the discharge of those functions to the councillor's council.
108. The section will apply retrospectively, so that any pay for time off which may have been granted to councillors since 16th February 2001, when the requirements of Schedule 7 to the 2000 Act came into force, will no longer be considered a political donation.
109. The Electoral Commission is required by this section to remove from the register of recordable donations any entry they would not have had to make had this section been in force on 16 February 2001.

Section 43 - Remote participation in and calling of local authority meetings

110. This section provides that in addition to the traditional form of meeting with members being present in one place, meetings of a local authority may be conducted in any way in which each member can communicate with each other, for example by video-conference. *Subsection (2)* provides that such meetings shall be conducted only on the direction of the convenor (or deputy convenor in the absence of the convenor) of the authority, committee, or sub-committee concerned. *Subsection (4)* allows summons to meetings to be delivered by means other than post or hand-delivery, for example, by e-mail.

Section 44 – Travel concessions

111. This section equalises for both men and women the age of eligibility for concessionary travel at age 60. This ensures that men and women aged 60 and over will be entitled to the same concession travel arrangements within their local transport area. This section amends section 93(7) of the [Transport Act 1985 \(c.67\)](#) to remove the differential in eligibility for concessionary travel between men and woman. Similarly, it amends the definition of “eligible persons” under section 68(7) of the [Transport \(Scotland\) Act 2001 \(asp 2\)](#) and gives the Scottish Ministers power to make an order providing for the age of eligibility for concessionary travel to rise in due course in line with Schedule 4 to the [Pensions Act 1995 \(c.26\)](#).

Section 45 – Power to charge for vacant places on school buses

112. This section amends section 51 of the [Education \(Scotland\) Act 1980 \(c.44\)](#) to allow a local authority to charge a sum it considers appropriate for the use by pupils of vacant places on school buses.

Section 46 – Power to provide funds for speed cameras etc.

113. This section enables the Scottish Ministers to provide funding to local authorities in whatever capacity (e.g. local roads authority, district court, police authority) and also joint police boards specifically for purposes connected to the prevention, detection and enforcement of speeding and red light offences.
114. The payments can be made either direct to the local authority or joint police board, or to another local authority (or board) on their behalf. This provision is required because many safety camera partnerships involve several local authorities, with the payments on behalf of the whole partnership being directed to a lead authority.
115. The Scottish Ministers are entitled to determine the timing, manner and any conditions under which the payments are made. This will enable the Scottish Ministers to set requirements for safety camera partnerships, for example, on the location and signing of speed cameras.

Section 47 - Power to provide funds for private water supplies

116. This section places a duty on local authorities to pay grants towards the improvement of private water supplies in accordance with conditions to be prescribed in regulations. It also places a duty on the Scottish Ministers to provide grants to local authorities in respect of their reasonable expenditure under this section.

Section 48 – Delegation of Strathclyde Passenger Transport Authority functions to officials

117. This section widens the powers of delegation afforded to Strathclyde Passenger Transport Authority. At present it may only delegate to its Chairman or to a sub-group of the Authority. The section will also give it powers to delegate as it may see fit to its Secretary, or to other officials appointed by the Authority.

Section 49 – Parliamentary procedure for regulations about vehicles used as taxis and private hire cars

118. This section requires all regulations made by the Scottish Ministers under sections 20(1) and 20(2) of the [Civic Government \(Scotland\) Act 1982 \(c.45\)](#) to be subject to scrutiny by the Scottish Parliament.

Section 50 – Suspension of requirement to advertise principal teacher posts

119. This section amends the [Education \(Scotland\) Act 1980 \(c.40\)](#) in connection with the advertising of principal teacher posts. To enable the introduction of a new

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

career structure for the teaching profession without following the advertisement and appointment procedures required by that Act, the provisions in that Act requiring Principal Teacher posts to be advertised are suspended for 1 year.

Section 51 – Arrangements and agreements with bodies corporate

120. **Section 51** provides that where a local authority enters into any arrangement or agreement with a body corporate, it must comply with any code of practice or document which the Scottish Ministers specify by direction is appropriate. **Subsection (2)** provides that such a direction may include requirements relating to the duty of Best Value described in **section 1**.

Section 52 – Guidance on contractual matters

121. **Section 52** provides that the Scottish Ministers may issue guidance on contractual matters to which local authorities must have regard when entering into contracts.

Section 53 – Qualification of and assistance for Accounts Commission auditors

122. This section amends the provisions in the 1973 Act relating to appointment of local authority auditors to allow a wider group of qualified persons from within the UK or European Economic Area to undertake this role. In addition this section provides for a scheme of delegation whereby auditors approved by the Accounts Commission for Scotland may delegate some or all of their functions to another individual or group where approval from the Accounts Commission has been sought.

Section 54 – Accounts Commission’s and auditor’s powers to obtain information from persons other than local authorities etc.

123. **Section 54** extends the audit arrangements for local authorities (as provided by the 1973 Act) to ensure that they cover any involvement by a local authority in a body corporate, for example, a company.
124. **Subsection (1)** amends section 97B (power of the Accounts Commission to require the furnishing of information and documents) of the 1973 Act to ensure that, where deemed necessary, the Accounts Commission have the authority to obtain relevant information from any body corporate which is discharging functions on behalf of the local authority.
125. **Subsection (2)** amends section 100 (auditor’s right of access to documents) of the 1973 Act to ensure that those charged with the responsibility for auditing a local authority’s accounts have a right of access to the accounts of any body corporate which, by arrangement or agreement, is discharging any of the local authority’s functions on its behalf.

Section 55 – Auditor’s duty in relation to aspects of best value and community planning

126. **Section 55** amends the 1973 Act to widen the existing duty of local authority auditors so that they can audit the arrangements local authorities have made to secure Best Value and to initiate, maintain and facilitate the process of community planning.

Section 56 – Extension of Controller of Audit’s reporting functions to best value and community planning: amendment of section 102 of 1973 Act

127. This section restates certain of the Controller of Audit’s reporting functions, originally provided by the 1973 Act, and extends them so that they include reports about a local authority’s performance in discharging any of its obligations under Parts 1 (Best Value and Accountability) and 2 (Community Planning).

Part 9 – General

Section 57 - Power to modify enactments

128. *Subsection (1)* enables the Scottish Ministers, by order, to amend, repeal, revoke or disapply any legislation that they consider prevents or hinders local authorities in complying with their duties of Best Value and Community Planning, and their use of the power of well-being; and any legislation that requires local authorities to prepare, produce or publish any plan or strategy. This power may be used to assist in the effective use of the power of well being and to assist in the Community Planning process and can apply to all local authorities, a class or classes of local authority, or a particular local authority or local authorities. An enactment may be amended or disapplied for a particular period of time.

Section 58 – Ancillary provision

129. This section gives the Scottish Ministers a power to make orders containing such ancillary provision as is necessary or expedient for the purposes or in consequence of the Act.

Section 59 – Equal Opportunities

130. This section places a duty on the Scottish Ministers, local authorities, those authorities, bodies, office holders and other persons mentioned in section 16(1) (i.e. those subject to the duty to participate in Community Planning) and any other person discharging a function under the Act to carry out their functions in a way which encourages equal opportunities and observes equal opportunity requirements.

Section 60 – Repeals and consequential amendments

131. This section repeals legislation that is incompatible with, or superseded by, the Act.

Section 61 – Definitions

132. This section defines “joint fire board”, “joint police board” and “local authority” for the purposes of the various sections of the Act.

Section 62 – Short title and commencement

133. This section gives the Act the title of Local Government in Scotland Act 2003. The section allows the Scottish Ministers to set different dates to commence different provisions of the Act by order.

LOCAL GOVERNMENT IN SCOTLAND ACT 2003

The following table sets out, for each Stage of the proceedings in the Scottish Parliament on the Bill for this Act, the dates on which proceedings at that Stage took place, the references to the Official Report of those proceedings and the dates on which Committee Reports were published and the references to those Reports.

<i>Proceedings and Reports</i>	<i>Reference</i>
<i>Stage 1</i>	
<i>(a) Local Government Committee</i>	
13 th Report, 2002	23 September 2002
16 th Meeting, 2002	5 June 2002, cols 2980-3026
17 th Meeting, 2002	11 June 2002, cols 3050-end

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

<i>Proceedings and Reports</i>	<i>Reference</i>
18 th Meeting, 2002	18 June 2002, cols 3070-end
19 th Meeting, 2002	25 June 2002, cols 3130-end
<i>Subordinate Legislation Committee</i>	
23 rd Meeting, 2002	3 September 2002, cols 987-988
24 th Meeting, 2002	10 September 2002, col 999
<i>Health and Community Care Committee</i>	
26 th Meeting, 2002	26 June 2002, cols 2878-end
<i>Equal Opportunities Committee</i>	
11 th Meeting, 2002	11 June 2002, cols 1508-end
12 th Meeting, 2002	25 June 2002, cols 1526-1537
13 th Meeting, 2002	3 September 2002, col 1542-end
<i>(b) Consideration by the Parliament</i>	
<i>Stage 2</i>	
<i>(a) Local Government Committee</i>	
30 th Meeting, 2002	26 November 2002, cols 3566-3579
29 th Meeting 2002	19 November 2002, cols 3491-3516
28 th Meeting 2002	12 November 2002, cols 3448-3463
27 th Meeting 2002	5 November 2002, cols 3402-3429
<i>Subordinate Legislation Committee</i>	
2 nd Report 2003: Local Government in Scotland Bill as amended at Stage 2 Delegated Powers Scrutiny	8 January 2003
1 st Meeting 2003	7 January 2003, cols 1148-1152
36 th Meeting 2002	17 December 2002, cols 1130-1135
<i>Stage 3</i>	
<i>Consideration by the Parliament</i>	
Stage 3 Debate and Parliamentary vote	8 January 2003, cols 16711-16775
Royal Assent- 11 February 2003	