

LOCAL GOVERNMENT IN SCOTLAND ACT 2003

EXPLANATORY NOTES

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.
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.
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.
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 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 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

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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.