

LOCAL GOVERNMENT IN SCOTLAND ACT 2003

EXPLANATORY NOTES

THE ACT – SECTION BY SECTION

Part 3 – Power to advance well-being

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 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.