



# Local Government (Scotland) Act 1973

## 1973 CHAPTER 65

### PART XII

#### MISCELLANEOUS, GENERAL AND TRANSITIONAL

##### *Miscellaneous*

#### **209 Removal or relaxation of controls affecting certain local authority functions.**

- (1) For the purpose of removing or relaxing controls which affect the exercise by local authorities of certain functions, including limits imposed on the amount of the fees which may be charged by local authorities in connection with the issue of licences and the exercise of other functions, the enactments specified in Schedule 25 to this Act shall have effect subject to the amendments set out in that Schedule.
- (2) Without prejudice to subsection (1) above, the Secretary of State may by order made by statutory instrument make provision for the removal or relaxation of any control, including any such limit as is referred to in subsection (1) above, which affects the exercise of any function by a local authority and which is conferred by or under any enactment on a Minister of the Crown or a body constituted by or under any enactment.
- (3) An order made under this section may contain such incidental or consequential provisions as appear to the Secretary of State to be appropriate, including provisions amending or repealing or revoking, with or without savings, any enactment passed before this Act and any instrument made under any such enactment.
- (4) A statutory instrument containing an order under this section shall be of no effect unless approved by a resolution of each House of Parliament.
- (5) In this section “local authority” includes a Passenger Transport Executive.

#### **210 Power to direct inquiries.**

- (1) Where any Minister is authorised by this Act to determine any difference, to make or confirm any order, to frame any scheme, or to give any consent, confirmation, sanction

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or approval to any matter, or otherwise to act under this Act . . . <sup>F1</sup>, or where the Secretary of State is authorised to hold an inquiry, either under this Act or under any other enactment relating to the functions of a local authority, he may cause a local inquiry to be held.

- (2) Except as otherwise provided in any enactment, the Minister may appoint an officer of his Department or any other person to conduct the inquiry and to report thereon to him.
- (3) The person appointed to hold the inquiry shall cause notice of the time and place of the inquiry to be given to the bodies and persons appearing to him to be interested.
- (4) For the purpose of any such local inquiry, the person appointed to hold the inquiry may by notice in writing require any person to attend, at a time and place stated in the notice, to give evidence or to produce any books or other documents in his custody or under his control which relate to any matter in question at the inquiry, and may take evidence on oath, and for that purpose administer oaths:

Provided that—

- (a) no person shall be required, in obedience to such a notice, to attend to give evidence or to produce any such books or other documents, unless the necessary expenses of his attendance are paid or tendered to him; and
  - (b) nothing in this subsection shall empower the person holding the inquiry to require any person to produce any book or document or to answer any question which he would be entitled on the ground of privilege or confidentiality, to refuse to produce or to answer if the inquiry were a proceeding in a court of law.
- (5) Any person who refuses or wilfully neglects to attend in obedience to a notice under this section to give evidence or who wilfully alters, suppresses, conceals, destroys or refuses to produce any book or other document which he is required or is liable to be required to produce for the purposes of this section shall be liable on summary conviction to a fine not exceeding [<sup>F2</sup>level 1 on the standard scale] or to imprisonment for a term not exceeding three months, or to both.
  - (6) The Minister causing the inquiry to be held may, if he thinks fit, pay such expenses of witnesses and such expenses of or concerning the production of any books or other documents as to him seems reasonable, and such expenses shall be deemed to be part of the expenses of the inquiry.
- [<sup>F3</sup>(7) The Minister may make orders as to the expenses incurred—
- (a) by the Minister in relation to—
    - (i) the inquiry;
    - (ii) arrangements made for an inquiry which does not take place; and
  - (b) by the parties to the inquiry,
- and as to the parties by whom any of the expenses mentioned in paragraphs (a) and (b) above shall be paid.
- (7A) What may be recovered by the Minister is the entire administrative expense of the inquiry, so that, in particular—
    - (a) there shall be treated as expenses incurred in relation to the inquiry such reasonable sum as the Minister may determine in respect of the general staff expenses and overheads of his department, and
    - (b) there shall be treated as expenses incurred by the Minister holding the inquiry any expenses incurred in relation to the inquiry by any other Minister or

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Government department and, where appropriate, such reasonable sum as that Minister or department may determine in respect of general staff expenses and overheads.

(7B) The Minister may by regulations prescribe for any description of inquiry a standard daily amount and where an inquiry of that description does take place what may be recovered is—

- (a) the prescribed standard amount in respect of each day (or an appropriate proportion of that amount in respect of a part of a day) on which the inquiry sits or the person appointed to hold the inquiry is otherwise engaged on work connected with the inquiry,
- (b) expenses actually incurred in connection with the inquiry on travelling or subsistence allowances or the provision of accommodation or other facilities for the inquiry, and
- (c) any expenses attributable to the appointment of an assessor to assist the person appointed to hold the inquiry, and
- (d) any legal expenses or disbursements incurred or made by or on behalf of the Minister in connection with the inquiry.]

[<sup>F4</sup>(8) Where the Minister has made an order under subsection (7) of this section requiring any party to pay expenses to him he shall certify the amount of the expenses, and any amount so certified shall be a debt due by that party to the Crown and shall be recoverable accordingly.]

(9) This section shall not apply in the case of a local inquiry held under any enactment where the enactment contains provisions with regard to such inquiries.

#### Textual Amendments

- F1** Words repealed by [Local Government \(Scotland\) Act 1975 \(c. 30\)](#), [Sch. 7](#)
- F2** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21\)](#), [ss. 289F](#), 289G (as inserted by [Criminal Justice Act 1982 \(c. 48\)](#), [s. 54](#))
- F3** [S. 210\(7\)\(7A\)\(7B\)](#) substituted for [s. 210\(7\)\(8\)](#) by [Housing and Planning Act 1986 \(c. 63, SIF 81:2\)](#), [ss. 49, 53](#), [Sch. 11 Pt. II para. 39\(1\)](#)
- F4** [S. 210\(8\)](#) inserted by [Housing and Planning Act 1986 \(c. 63, SIF 81:2\)](#), [ss. 49, 57\(2\)](#), [Sch. 11 Pt. II para. 39\(2\)](#)

#### Modifications etc. (not altering text)

- C1** [S. 210\(2\)–\(9\)](#) excluded by [Water \(Scotland\) Act 1980 \(c. 45\)](#), [s. 99\(2\)](#)

#### [<sup>F5</sup>210A Recovery of expenses of local inquiry.

- (1) The following provisions of this section apply where a Minister is authorised under or by virtue of any of the following statutory provisions to recover expenses incurred by him in relation to an inquiry— section 129(1)(d) of the <sup>M1</sup>Road Traffic Regulation Act 1984 (expenses of inquiry under that Act), any other statutory provision to which this section is applied by order of the Minister.
- (2) What may be recovered by the Minister is the entire administrative expense of the inquiry, so that, in particular—

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- (a) there shall be treated as expenses incurred in relation to the inquiry such reasonable sum as the Minister may determine in respect of the general staff expenses and overheads of his department, and
  - (b) there shall be treated as expenses incurred by the Minister holding the inquiry any expenses incurred in relation to the inquiry by any other Minister or Government department and, where appropriate, such reasonable sum as that Minister or department may determine in respect of general staff expenses and overheads.
- (3) The expense of an inquiry which does not take place may be recovered by the Minister from any person who would have been a party to the inquiry to the same extent, and in the same way, as the expense of an inquiry which does take place.
- (4) The Minister may by regulations prescribe for any description of inquiry a standard daily amount and where an inquiry of that description does take place what may be recovered is—
- (a) the prescribed standard amount in respect of each day (or an appropriate proportion of that amount in respect of a part of a day) on which the inquiry sits or the person appointed to hold the inquiry is otherwise engaged on work connected with the inquiry,
  - (b) expenses actually incurred in connection with the inquiry on travelling or subsistence allowances or the provision of accommodation or other facilities for the inquiry,
  - (c) any expenses attributable to the appointment of an assessor to assist the person appointed to hold the inquiry, and
  - (d) any legal expenses or disbursements incurred or made by or on behalf of the Minister in connection with the inquiry.
- (5) An order or regulation under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) An order applying this section to a statutory provision may provide for the consequential repeal of so much of that provision, or any other provision, as restricts the sum recoverable by the Minister in respect of the services of any officer engaged in the inquiry or is otherwise inconsistent with the application of the provisions of this section.]

#### **Textual Amendments**

**F5** S. 210A inserted by [Housing and Planning Act 1986 \(c. 63, SIF 81:2\)](#), s. 49, **Sch. 11 Pt. II para. 39(4)**

#### **Marginal Citations**

**M1** 1984 c. 27(107:1).

## **211 Provision for default of local authority.**

- (1) If a complaint is made to the Secretary of State or any appropriate Minister that a local authority have failed to do what is required of them by or under this Act or any other enactment or the Secretary of State or that Minister is of opinion that an investigation should be made as to whether a local authority have so failed, he may cause a local inquiry to be held into the matter.

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(2) If after such a local inquiry the Secretary of State or appropriate Minister is satisfied that there has been such a failure on the part of the authority in question, he may make an order declaring the authority to be in default and directing them for the purpose of remedying the default to take such steps and within such time or times as may be specified in the order.

[<sup>F6</sup>(2A) If the Secretary of State or appropriate Minister—

- (a) is about to make an order under subsection (2) above; and
- (b) is satisfied that the failure to which the order relates has continued or recurred, he may, in that order and without any local inquiry, declare the authority to be in default in respect of the continuance or recurrence of the failure and direct them for the purpose of remedying the default to take such steps and within such time or times as may be specified in the order.

(2B) The Secretary of State or appropriate Minister may, in an order under subsection (2) above, notify the local authority that any continuance or recurrence of the failure in respect of which the authority have been declared to be in default happening after the date of the order may be made the subject of an application to the Court of Session under subsection (3A) below.]

(3) If the authority declared to be in default by such an order fail to comply with any requirement thereof within the time limited thereby for compliance with that requirement, the Court of Session may, on the application of the Lord Advocate on behalf of the Secretary of State or appropriate Minister, order specific performance of the functions in respect of which there has been default, and do otherwise as to the court appears to be just.

[<sup>F7</sup>(3A) If—

- (a) a local authority have been notified under subsection (2B) above; and
- (b) there has been any such continuance or recurrence as is mentioned in that subsection of the failure to which the notification relates,

the Court of Session may, on the application of the Lord Advocate on behalf of the Secretary of State or appropriate Minister, order specific performance of the functions in respect of which there has been such continuance or recurrence of the failure and do otherwise as to the court appears to be just.]

(4) Nothing in this section shall affect the provisions of any other enactment relating to the enforcement of a statutory duty whether under that enactment or otherwise.

#### Textual Amendments

- F6** S. 211(2A)(2B) inserted by [Local Government and Housing Act 1989 \(c. 42, SIF 81:2\), s. 159\(2\)](#)
- F7** S. 211(3A) inserted by [Local Government and Housing Act 1989 \(c. 42, SIF 81:2\), s. 159\(3\)](#)

#### Modifications etc. (not altering text)

- C2** S. 211 extended by [Housing \(Scotland\) Act 1987 \(c. 26, SIF 61\), ss. 78\(4\), 335](#)
- C3** S. 211 applied (*temp.* from 6.4.1995 until 1.4.1996) by [S.I. 1995/789, art. 2, Sch. para. 3](#)

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## 212 Limitation of liability of certain owners.

Where a local authority claim to recover any sum in respect of rates or otherwise under or in pursuance of any provision of this Act from a person as being the owner of premises and that person proves that he—

- (a) is receiving the rent merely as trustee, tutor, curator, factor or agent for some other person; and
- (b) has not, and since the date of the service on him of the demand for payment has not had, in his hands on behalf of that other person sufficient money to discharge the whole demand of the authority,

his liability should be limited to the total amount of the money which he has or has had in his hands as aforesaid.

## 213 Tweed Fisheries Commissioners.

<sup>F8</sup>(1) .....

<sup>X1</sup>(3) The said Act of 1969 shall have effect subject to the amendments set out in Schedule 26 to this Act.

### Editorial Information

**X1** The text of ss. 130(3), 132(2), 134(2), 135(10), 138(2), 146(2)-(9), 147(2)(6)-(8), 155(2)(3)(5)-(7), 156(2)(3), 166(2), 170(2), 175, 184, 213(3), 237(1), Schs. 16, 19, 21 paras. 2-12 and Sch. 26 is in the form in which it was originally enacted: it was not reproduced in Statutes In Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991

### Textual Amendments

**F8** S. 213(1)-(2) repealed by [Statute Law \(Repeals\) Act 1981 \(c. 19\)](#), **Sch. 1 Pt. VII**

## *General*

## 214 Consequential and minor modifications and amendments.

- (1) As from 16th May 1975 Part I of Schedule 27 to this Act shall have effect for the purpose of making general adaptations of enactments, being adaptations which are consequential on the foregoing provisions of this Act.
- (2) As from that date the enactments specified in Part II of that Schedule shall have effect subject to the modifications and amendments set out in the said Part II, being modifications and amendments which are consequential on the foregoing provisions of this Act and minor amendments.

## 215 Consequential and supplementary provisions.

- (1) The Secretary of State or any appropriate Minister may at any time, whether before or after 16th May 1975, by order make such incidental, consequential, transitional or supplementary provisions as may appear to him—
  - (a) to be necessary or proper for the general or any particular purposes of this Act or in consequence of any of the provisions thereof or for giving full effect thereto; or

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(b) to be necessary or proper in consequence of such of the provisions of any other Act passed in the same session as this Act as apply to any area or authority affected by this Act;

and nothing in any other provision of this Act shall be construed as prejudicing the generality of this subsection.

(2) An order under this section may in particular make provision, in the case of any body, person, funds or matter affected by this Act, for the transition from the provisions of any enactment to the provisions of this Act, but nothing in that order shall be inconsistent with any provision of this Act.

(3) Subject to subsection (5)

below any of the following things done or treated by virtue of any enactment as having been done by or to or in relation to an existing local authority in connection with the discharge of any of their functions, that is to say—

any written agreement or other instrument in writing or any determination or declaration made or treated as made by such an authority,

any notice or direction given or treated as given by or to such an authority,

any licence, permission, consent, approval, exemption, dispensation or relaxation granted or treated as granted by or to such an authority,

any application, proposal or objection made or treated as made by or to such an authority,

any condition or requirement imposed or treated as imposed by or on such an authority, or

any appeal allowed by or in favour of or against such an authority,

shall, as from 16th May 1975, be treated as having been done by, to or in relation to the new local authority by whom those functions become exercisable on and after that date by or by virtue of this Act, and any such thing shall as from that date have effect as if any reference therein to a specified existing local authority by whom those functions were exercisable before that date were a reference to the new local authority by whom those functions become exercisable.

(4) If there is any doubt as to the identity of a local authority to whom any particular functions are so transferred, that authority shall be taken to be such authority as may be specified in a direction given by a Minister of the Crown concerned with the discharge of those functions.

(5) Subsection (3)

above is without prejudice to any express provision made by, or by any instrument made under, this Act, but has effect subject to any provision to the contrary so made and in particular may be excluded from applying, either wholly or to any specified extent, in any particular case by an order made by the Secretary of State by statutory instrument.

(6) Section 25 of this Act shall apply for the purposes of Part I and of this Part of this Act as if any reference to an order under Part II of this Act included a reference to any provision of Part I of this Act or to any provision of any instrument made under the said Part I or this Part of this Act, but any agreement made by virtue of this subsection may only be made by new local authorities and after 16th May 1975.

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- (7) In this section, “existing local authority” includes a joint committee, joint board and water board.
- (8) Any statutory instrument containing an order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

**Modifications etc. (not altering text)**  
**C4** S. 215 extended by [Value Added Tax Act 1983 \(c. 55\)](#), [Sch. 10 para. 7](#)

**216 Transfer of officers.**

- (1) An order or regulations under section 24, or an order under section 215, of this Act may contain provisions as to the transfer of any person who is, on such date as may be specified in relation to him in the order or by or under the regulations, the holder of any office or employment and who is affected by any provision of, or of any instrument made under, this Act and shall contain provision for the protection of the interests of such persons.
- (2) . . . . . <sup>F9</sup>
- (3) Any such order or regulations as is or are referred to in subsection (1) . . . <sup>F10</sup> above shall include such provision with respect to any person who is transferred by or under the order or regulations from the employment of one authority to that of another so as to secure that—
  - (a) so long as he continues in the employment of that other authority by virtue of the transfer and until he is served with a statement in writing referring to the order or regulations and specifying new terms and conditions of employment, he enjoys terms and conditions of employment not less favourable than those which he enjoyed immediately before the date of transfer; and
  - (b) the said new terms and conditions are such that—
    - (i) so long as he is engaged in duties reasonably comparable to those in which he was engaged immediately before the date of transfer, the scale of his salary or remuneration, and
    - (ii) the other terms and conditions of his employment,
 are not less favourable than those which he enjoyed immediately before the date of transfer.
- (4) . . . . . <sup>F9</sup>

**Textual Amendments**  
**F9** Ss. 216(2)(4)(5), 218–221, 224(1)–(4) repealed by [Local Government and Planning \(Scotland\) Act 1982 \(c. 43\)](#), [Sch. 4 Pt. I](#)  
**F10** Words repealed by [Local Government and Planning \(Scotland\) Act 1982 \(c. 43\)](#), [Sch. 4 Pt. I](#)

**217 Continuity of employment in cases of voluntary transfer.**

- (1) This section applies to a person if—



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- (a) at some time before 16th May 1975, or on that date but otherwise than by virtue of provision made by an order under section 216 above, he enters the employment of a new local authority (in this section referred to as “his new employment”), and
  - (b) had he continued until 16th May 1975 in the employment (in this section referred to as “his previous employment”) which he last held before he entered his new employment or (if he did so continue) had he then ceased to be in that employment by reason only of Part I of this Act, provision would have been made by an order under section 216(2) of this Act for his transfer on that date to the employment of a specified local authority.
- (2) Where this section applies to a person, then for the purposes of [F11]paragraph 10 of Part II of Schedule 1 to the M2Trade Union and Labour Relations Act 1974] (qualifying period for protection from unfair dismissal) and [F12]section 49 of the M3Employment Protection (Consolidation) Act 1978] (minimum periods of notice)—
- (a) the period of employment in his previous employment shall count as a period of employment in his new employment, and
  - (b) the change of employment shall not break the continuity of the period of employment.

**Textual Amendments**

- F11 Words substituted by virtue of Trade Union and Labour Relations Act (c. 52), Sch. 4 para. 7
- F12 Words substituted by virtue of [Employment Protection \(Consolidation\) Act 1978 \(c. 44\)](#), [Sch. 15 para. 4](#)

**Marginal Citations**

- M2 1974 c. 52.
- M3 1978 c. 44.

218— ..... F13  
221.

**Textual Amendments**

- F13 Ss. 216(2)(4)(5), 218–221, 224(1)–(4) repealed by [Local Government and Planning \(Scotland\) Act 1982 \(c. 43\)](#), [Sch. 4 Pt. I](#)

**222 Transfer of property.**

- (1) The Secretary of State shall by order provide that all property vested on 15th May 1975 in one or more existing relevant authorities, other than property which is subject to the provisions of section 128 or 223 of this Act or property mentioned in subsection (2) below, shall on 16th May 1975 be transferred to and vest in such new relevant authority as may be specified in or determined under the order.
- (2) The Secretary of State shall by order provide that all property held as part of the common good by an existing local authority on 15th May 1975 shall on 16th May 1975 be transferred to and vest in such islands or district council as may be specified in or determined under the order, and those councils, other than the district councils

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of Aberdeen, Dundee, Edinburgh and Glasgow, shall, in administering that property, have regard to the interests of the inhabitants of the area to which the common good formerly related.

- (3) The district councils of Aberdeen, Dundee, Edinburgh and Glasgow shall, in administering the property transferred to them by virtue of subsection (2) above, have regard to the interests of all the inhabitants of their districts.
- (4) An order under this section may contain such incidental, consequential, transitional or supplementary provisions as appear to the Secretary of State to be necessary or expedient for the purposes of the order.
- (5) A statutory instrument containing an order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

**Modifications etc. (not altering text)**

**C5** S. 222(2) excluded by [Local Government \(Scotland\) Act 1975 \(c. 30\)](#), s. 16, [Sch. 3 para. 13\(1\)](#)

**223 Property held on trust.**

- (1) All property held on trust immediately before 16th May 1975 by
  - (a) an existing local authority, or
  - (b) a councillor and a specified officer of an existing local authority,
 shall on that day be transferred to and vest (subject to the same trust) in the appropriate islands or district council.
- (2) The council in whom property is vested by virtue of subsection (1)
 

above shall nominate a sufficient number of their councillors to act as trustees of that property and in so doing shall have regard to the terms of the trust deed; and where the property is held immediately before 16th May 1975 by the persons mentioned in subsection (1)(b) above, the council shall nominate the proper officer as one of the trustees.
- (3) All property held on trust immediately before 16th May 1975 by a specified officer of an existing local authority shall on that day be transferred to and vest (subject to the same trust) in the proper officer of the appropriate islands or district council.
- (4) Where, immediately before 16th May 1975, property is held on trust by the holder of an office, whether as a councillor or a specified officer, connected with an existing local authority or existing local authorities and any other person, the appropriate islands or district council or (where the area to which the trust relates comprises the areas of more than one existing local authority) the appropriate islands or district councils shall, on the application of the trustees, nominate a sufficient number of their councillors to act in place of such holder and in so doing shall have regard to the terms of the trust deed, and, where the terms of the trust deed so require, the said council or councils shall nominate the proper officer as one of the trustees.
- (5) In this section “appropriate islands or district council” means, in relation to an existing local authority, the islands or district council whose area comprises the whole or the greater part of the area of the existing local authority, and “appropriate islands or district councils” shall be construed accordingly.

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(6) This section shall not apply to property which is subject to section 128 of this Act.

**Modifications etc. (not altering text)**

**C6** S. 223 excluded by [Local Government \(Scotland\) Act 1975 \(c. 30\)](#), s. 16, [Sch. 3 para. 13\(1\)](#)

**224 Property commission for Scotland.**

(1) . . . . . <sup>F14</sup>

(5) . . . . . <sup>F15</sup>

(6) In . . . <sup>F16</sup> section 222 of this Act—

- (a) “property” means any property, heritable or moveable, other than a security or balance in a fund, and all interests, rights and liabilities in or relating to property;
- (b) “relevant authority” means a local authority within the meaning of the 1947 Act or this Act, as the context may require, a joint committee, river purification board or water board or an association of local authorities the constituent members of which include any such local authority as aforesaid.

(7) In the foregoing provisions of this Part of this Act “water board” means a regional water board or a water development board, or both, as the context may require.

**Textual Amendments**

**F14** Ss. 216(2)(4)(5), 218–221, 224(1)–(4) repealed by [Local Government and Planning \(Scotland\) Act 1982 \(c. 43\)](#), [Sch. 4 Pt. I](#)

**F15** S. 224(5) repealed by [House of Commons Disqualification Act 1975 \(c. 24\)](#), [Sch. 3](#)

**F16** Words repealed by [Local Government and Planning \(Scotland\) Act 1982 \(c. 43\)](#), [Sch. 4 Pt. I](#)

**225 Local Acts and instruments.**

(1) Subject to subsections (2)

and (8) below, any local statutory provision to which this section applies and which is not continued in force by any other provision of this Act shall—

- (a) notwithstanding the changes of administrative areas and local authorities effected by or under 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 16th May 1975 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—

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- (a) this Act, other than Part I of Schedule 27;
  - (b) any Act passed after this Act and before 16th May 1975; and
  - (c) any order made under section 215 of this Act or the following provisions of this section.
- (3) Any local statutory provision to which this section applies and which relates to functions exercisable by a 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 16th May 1975 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 16th May 1975 and shall have effect subject to any provision to the contrary made by, or by any instrument made under, this Act and, without prejudice to the foregoing, the Secretary 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 215 of this Act, the Secretary of State or any appropriate Minister 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 or that Minister 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 authority appearing to the Secretary of State or that Minister 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 215 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) with 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 or that Minister to be expedient.

*Status: Point in time view as at 01/02/1991.*

*Changes to legislation: Local Government (Scotland) Act 1973, Part XII is up to date with all changes known to be in force on or before 19 January 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (6) [<sup>F17</sup>Subject to sections 134(2), 135 and 137 of the <sup>M4</sup>Civic Government (Scotland) Act 1982 and any order under these sections,] All local statutory provisions to which this subsection applies shall cease to have effect at the end of [<sup>F18</sup>1984], but—
- (a) the Secretary of State or any appropriate Minister may by order exempt any such provision from the foregoing provision of this subsection;
  - (b) the Secretary of State may from time to time by order postpone the date on which all local statutory provisions applying to the whole or part of any local government area, so far as they so apply, are to cease to have effect under this subsection.

- (7) An instrument containing an order under subsection (5)

or (6) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

- (8) Any local statutory provision relating to valuation or the determination, levying, collection or recovery of rates shall cease to have effect:

Provided that this subsection shall not affect the operation of section 19(2) of the <sup>M5</sup>Water (Scotland) Act 1949 (domestic water rate payable at reduced rate in certain cases).

- (9) This section applies to any local statutory provision in force immediately before 16th May 1975 and not expressly repealed or revoked by this Act, and subsection (6) above applies to the following 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;

not being a provision relating to a statutory undertaking or a protective provision for the benefit of any person.

- (10) In subsection (9)

above “local authority” means—

- (a) a council of a county, county of city, burgh or district;
- (b) any body which immediately after the coming into force of the enactment which constituted the body exercised functions which immediately before 16th May 1975, were exercised by one of the councils referred to in paragraph (a) above;

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, water or district heating.

#### Textual Amendments

**F17** Words inserted by [Civic Government \(Scotland\) Act 1982 \(c. 45\), s. 134\(1\)](#)

**F18** Words substituted by [Civic Government \(Scotland\) Act 1982 \(c. 45\), s. 134\(1\)](#)

*Status: Point in time view as at 01/02/1991.*

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#### **Modifications etc. (not altering text)**

- C7** S. 225(6) amended by [Local Government and Planning \(Scotland\) Act 1982 \(c. 43\), s. 29\(2\)](#) and [Civic Government \(Scotland\) Act 1982 \(c. 45\), ss. 134, 135](#)

#### **Marginal Citations**

- M4** 1982 c. 45.  
**M5** 1949 c. 31.

## **226 Existing joint boards.**

- (1) Subject to the following provisions of this section, where an existing joint board, every member of which is appointed by a local authority, was constituted by or under any enactment for exercising functions for any area, then, notwithstanding the change of areas and authorities effected by Part I of this Act, the board shall continue to exist on and after 16th May 1975 and to exercise for that area the same functions as before that date (to the exclusion of new local authorities).
- (2) Subsection (1)
 

above shall not apply to a joint board constituted for an area which on 16th May 1975 will be wholly within the area of a single new local authority if the board was constituted for the purpose of exercising functions which on and after that date would (apart from the existence of the board) be exercisable by that local authority, whether or not the board has additional functions which, apart from this section, would not be so exercisable; and accordingly in any such case—

  - (a) the functions of the board shall on 16th May 1975 become functions of that new local authority; and
  - (b) the joint board shall cease to exist on that date.
- (3) The continuation in existence of any area or body by this section shall not prejudice any power conferred by any enactment to amend or revoke the order constituting the area or body or the power to make provision with respect to the body conferred by section 215 of this Act.
- (4) The following provisions shall have effect for the construction of references to a local statutory provision to which section 225 of this Act applies:—
  - (a) any reference to an existing joint board which ceases to exist by virtue of this section, or any reference which is to be construed as such a reference, shall be construed as a reference to the local authority by whom the functions of that board will become exercisable by virtue of this section;
  - (b) any reference to a united district or other area the existing joint board for which ceases to exist by virtue of subsection (2) above, or any reference which is to be construed as such a reference, shall be construed as a reference to so much of the area of the new local authority by whom the functions formerly exercisable by the existing joint board become exercisable on 16th May 1975 as comprises the area for which the board acted.
- (5) The foregoing provisions of this section shall have effect subject to any provision to the contrary made by, or by any instrument made under, this Act and shall be without prejudice to any express provision so made.

*Status: Point in time view as at 01/02/1991.*

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## 227 Abolition of Dean of Guild Court.

On 16th May 1975 all dean of guild courts shall cease to exist, and unless otherwise provided, all powers, duties and responsibilities conferred on a dean of guild or a dean of guild court by or under any enactment shall thereafter be exercised by the authority responsible for building control in the area concerned.

## 228 Abolition of fiars courts for counties, etc.

- (1) The courts for striking the fiars prices for the counties of Scotland shall no longer be held, and accordingly no payment becoming due after the appointed day shall be calculated by reference to fiars prices.
- (2) Subject to the provisions of section 12 of the <sup>M6</sup>Conveyancing (Scotland) Act 1924 (abolition and commutation of grain, etc. feuduties) the amount of any periodical payment becoming due after the appointed day which would, if it had become due immediately before that day, have fallen to be ascertained by reference to fiars prices, shall be a sum in money representing the average value of the payment due during the last three years before that day.
- (3) In the event of the parties failing to reach agreement as to the commutation into money of any payment by reference to subsection (2) above, either party may apply to the sheriff for a decree declaring the commuted value in money of the payment.
- (4) Where any payment, the amount of which falls to be ascertained by reference to subsection (2) above, is exigible from any person by virtue of an interest in land, the title to which may be recorded in the Register of Sasines, any agreement relative thereto and any decree pronounced under subsection (3) above shall, on being duly recorded in the appropriate register, be binding upon all persons having interest.
- (5) Any valuation or question mentioned in subsection (4) of section 75 of the <sup>M7</sup>Agricultural Holdings (Scotland) Act 1949, falling to be decided by reference to a date after the appointed day, which would, if it had fallen to be decided by reference to a date immediately before that day, have been decided by reference to fiars prices, shall be decided in such manner as the parties may by agreement determine or, failing such agreement, shall, notwithstanding the provisions of that subsection, be decided by arbitration under that Act.
- (6) In this section “the appointed day” means the day appointed under section 238 of this Act for the coming into operation of this section.

### Marginal Citations

M6 1924 c. 27.

M7 1949 c. 75.

## 229 The Burgh Police (Scotland) Acts 1892 to 1911.

- (1) [<sup>F19</sup>Subject to sections 134(2), 135 and 137 of the <sup>M8</sup>Civic Government (Scotland) Act 1982 and any order under these sections,] The Burgh Police (Scotland) Acts 1892 to 1911 shall cease to have effect at the end of [<sup>F20</sup>1984], and until that time those Acts shall have effect subject to the amendments set out in Schedule 28 to this Act, to the provisions of this section and of any order made thereunder.



*Status: Point in time view as at 01/02/1991.*

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(2) Subject to subsection (3)

below, the said Acts of 1892 to 1911 shall continue to apply in those areas and to those things and persons in which, to which and to whom they at present apply.

(3) The Secretary of State may by order provide for the extension of any provision of the said Acts of 1892 to 1911 to such areas, things and persons as he may think fit, and, without prejudice to that generality, any such order may—

- (a) extend the provision throughout a new local government area;
- (b) provide that the provision shall have effect in such an area to the exclusion of any enactment for corresponding purposes;
- (c) make such modifications of any such enactment in its application to such an area as will secure that the enactment will operate harmoniously with the said provision in that area;
- (d) repeal or revoke any such enactment or instrument which appears to the Secretary of State to have become spent, obsolete or unnecessary, or to have been substantially superseded by any such provision;
- (e) transfer to any authority appearing to the Secretary of State to be appropriate any function of an existing local authority which is not to become a function of some other authority;
- (f) make such modifications of the said provision in its application to a new local government area as appear to the Secretary of State to be expedient.

(4) An instrument containing an order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

**Textual Amendments**

**F19** Words inserted by [Civic Government \(Scotland\) Act 1982 \(c. 45\), s. 134\(1\)](#)

**F20** Words substituted by [Civic Government \(Scotland\) Act 1982 \(c. 45\), s. 134\(1\)](#)

**Marginal Citations**

**M8** [1982 c. 45.](#)

**230 Committees of existing local authorities.**

(1) Existing local authorities may establish, or the Secretary of State may require existing local authorities to establish, a committee in each region, islands area or district to consider any matter which it is expedient should be considered before the election of the council of the authority concerned in order to ensure the effective operation of that council on and after 16th May 1975.

(2) A committee established under this section 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 agreement, as may be determined by the Secretary of State.

(3) Any expenses incurred by a committee established under subsection (1)

above shall be defrayed by the local authorities by whom the committee was established in such proportions respectively as may be agreed between them or, in default of such agreement, as may be determined by the Secretary of State.



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## **231 Application to sheriff in cases of difficulty.**

- (1) Where, from failure to observe any of the provisions of this Act or from any other cause, a difficulty arises in carrying into effect any of the provisions of this Act, or where in any case any question arises as to the procedure to be followed, or where any question arises in connection with the election of members of a local authority and no provision is made in this Act for meeting such difficulty or determining such question, it shall be lawful for the local authority or any seven local government electors for the area of the authority or the proper officer of the authority, or in the case of a question relating to an election of members of a local authority for the returning officer at the election, to make application to the sheriff setting forth the circumstances and after such intimation and inquiry as to the sheriff seems proper, the sheriff may give such directions as in his judgment will enable the provisions of this Act to be complied with as nearly as possible or determine the question as the case may be, and may make such order as seems proper to him with reference to the expenses in connection with the application and the persons by whom such expenses are payable.
- (2) Subject to any order made by the sheriff, all expenses incurred in connection with any application under the preceding subsection shall be defrayed as part of the general expenses of the authority.

### **Modifications etc. (not altering text)**

- C8** S. 231 applied (4.1.1995) by 1994 c. 39, s. 60 (with s. 7(2)); S.I. 1994/2850, art. 3(a), **Sch. 2**  
S. 231 applied (*temp.* from 6.4.1995 until 1.4.1996) by S.I. 1995/789, art. 2, **Sch. para. 3**

## **232 Provisions regarding applications to court.**

- (1) Where any application to the sheriff under this Act is dealt with in the first instance by a sheriff other than the sheriff principal, it shall be competent to appeal to the sheriff principal against the decision of the sheriff within fourteen days after the date thereof, but subject thereto the decision of the sheriff principal or sheriff shall, except where otherwise specifically provided, be final.
- (2) Where the area of a local authority is situated within more than one sheriffdom, any application to the sheriff under this Act shall be presented to the sheriffs principal of the sheriffdoms in which the area of the authority is situated.
- (3) Where any application is presented to two or more sheriffs principal under this Act and they are unable to reach a unanimous decision, they shall state a case for the Court of Session and the Court may pronounce any deliverance which it would have been competent for the sheriffs to make.

### **Modifications etc. (not altering text)**

- C9** S. 232 applied (4.1.1995) by 1994 c. 39, s. 60 (with s. 7(2)); S.I. 1994/2850, art. 3(a), **Sch. 2**  
S. 232 applied (*temp.* from 6.4.1995 until 1.4.1996) by S.I. 1995/789, art. 2, **Sch. para. 3**

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### 233 Orders, rules and regulations.

- (1) Any power to make orders, rules or regulations conferred on any Minister by any provision of this Act, other than section 104(1), [F<sup>21</sup>210(7)] 211 or 221 shall be exercisable by statutory instrument.
- (2) Any order under this Act may be varied or revoked by a subsequent order made in the like manner and subject to the same provisions.
- (3) An order made by a Minister under this Act may contain such incidental, consequential and supplemental provisions as appear to the Minister by whom the order is made to be necessary or proper for bringing the order into operation and giving full effect thereto.

#### Textual Amendments

- F21** “210(7)” inserted by [Housing and Planning Act 1986 \(c. 63, SIF 81:2\)](#), s. 49, **Sch. 11 Pt. II para. 39(3)**

### 234 Expenses.

There shall be defrayed out of moneys provided by Parliament—

- (a) any expenses incurred by any Minister under this Act; and
- (b) any increase attributable to the provisions of this Act in the sums payable out of moneys so provided under any other enactment.

### 235 General provisions as to interpretation.

- (1) In this Act, except where the context otherwise requires—
  - “appropriate Minister”, with respect to any matter, means the Minister in charge of any Government Department concerned with that matter; but the validity of any order or regulation purporting to be made by any Minister by virtue of a power conferred on the appropriate Minister by this Act shall not be affected by any question as to whether or not that Minister was the appropriate Minister for the purpose;
  - “area”, in relation to a local authority, means a region, islands area or a district as the case may be;
  - “college council” and “school council” have the meanings assigned to them by section 125 of this Act;
  - “education authority”, “educational establishment”, “further education” and “school” have the same meanings as in [F<sup>22</sup>the M<sup>9</sup>Education (Scotland) Act 1980];
  - “education committee” means a committee appointed under section 124 of this Act;
  - “electoral area”, in relation to a region or islands area, means an electoral division and, in relation to a district, means a ward, within the meaning of section 5 of this Act;
  - “enactment” includes an order, regulation, rule or other instrument having effect by virtue of an Act;
  - “existing”, in relation to any authority, means that authority as they existed immediately before the passing of this Act;
  - “financial year” has the meaning assigned to it by section 96(5) of this Act;

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“joint board” means a body corporate, constituted for the purposes of a combination of local authorities under this Act or by or under any other enactment, consisting exclusively of persons appointed by the local authorities;

“joint committee” means a body, not being a body corporate, constituted for the purpose of a combination of local authorities under this Act or by or under any other enactment, consisting exclusively of persons appointed by the local authorities;

“land” includes land covered with water and any interest right or servitude in or over land;

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

“local statutory provision” means a provision of a local Act (including an Act confirming a provisional order) or a provision of a public general Act passed with respect only to the whole or part of an existing local government area or a provision of an instrument made under any such local or public general Act or of an instrument in the nature of a local enactment made under any other Act;

“new”, in relation to any authority, means that authority as established by or under this Act;

“1947 Act” means the <sup>M10</sup>Local Government (Scotland) Act 1947;

“prescribed” means prescribed by regulations made by the Secretary of State;

“rating authority” has the meaning assigned to it by section 109(1) of this Act;

“water authority” has the meaning assigned to it by section [<sup>F23</sup>109(1) of the <sup>M11</sup>Water (Scotland) Act 1980].

- (2) Any reference in this Act to a regional, islands or district council includes a reference to any combination of those councils.
- (3) Any reference in this Act to a proper officer and any reference which by virtue of this Act is to be construed as such a reference shall, in relation to any purpose and any local authority or other body or any area, be construed as a reference to an officer appointed for that purpose by that body or for that area, as the case may be.
- (4) In this Act, except where the context otherwise requires, references to any enactment shall be construed as references to that enactment as amended, extended or applied by or under any other enactment, including any enactment contained in this Act.

#### Textual Amendments

**F22** Words substituted by virtue of [Interpretation Act 1978 \(c. 30\), s. 17\(2\)\(a\)](#) and [Education \(Scotland\) Act 1980 \(c. 44\), Sch. 3 para. 1](#)

**F23** Words substituted by [Water \(Scotland\) Act 1980 \(c. 45\), Sch. 10 Pt. II](#)

#### Marginal Citations

**M9** [1980 c. 44.](#)

**M10** [1947 c. 43.](#)

**M11** [1980 c. 45.](#)

## 236 Savings.

- (1) . . . . . <sup>F24</sup>

*Status: Point in time view as at 01/02/1991.*

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- (2) <sup>F25</sup>Subject to section 74(3) of this Act and to section 20 of the Water (Scotland) Act 1980] Nothing in sections 70 to 78 of this Act shall affect any provision relating to the acquisition by agreement or compulsorily, appropriation, letting or disposal of land, the erection of buildings or the execution of works by a local authority contained in any of the following enactments or any instrument made thereunder—
- (a) The Burial Grounds Acts;
  - (b) The Military Lands Acts 1892 to 1903;
  - (c) The <sup>M12</sup>Cremation Act 1902;
  - (d) The Housing (Scotland) <sup>F26</sup>Act 1987];
  - <sup>F27</sup>(e) The Water (Scotland) Act 1980;]
  - (f) The Education (Scotland) Acts 1939 to 1973;
  - (g) The <sup>M13</sup>Police (Scotland) Act 1967;
  - (h) Any local Act.
- (3) Any enabling provision contained in this Act shall be in addition to, and not in derogation of, any powers exercisable by Her Majesty by virtue of her royal prerogative.

#### Textual Amendments

- F24** S. 236(1) repealed by [Electricity Act 1989](#) (c. 29, SIF 44:1), s. 112(3)(4), Sch. 17 para. 35(1), **Sch. 18**
- F25** Words inserted by [Local Government \(Miscellaneous Provisions\) \(Scotland\) Act 1981](#) (c. 23), **Sch. 3 para. 28**
- F26** Words substituted by [Housing \(Scotland\) Act 1987](#) (c. 26, SIF 61), ss. 335, 339(2), **Sch. 23 para. 20(3)**
- F27** S. 236(2)(e) substituted by [Water \(Scotland\) Act 1980](#) (c. 45), **Sch. 10 Pt. II**

#### Marginal Citations

- M12** 1902 c. 8.  
**M13** 1967 c. 77.

## 237 Repeals.

- (1) The enactments specified in Schedule 29 to this Act (which include enactments that were obsolete, spent or unnecessary before the passing of this Act) are hereby repealed to the extent mentioned in the third column of that Schedule.
- (2) Without prejudice to <sup>F28</sup>section 17(2) of the <sup>M14</sup>Interpretation Act 1978], where this Act repeals any enactment making provision with respect to a particular matter or particular matters and either makes or applies some other enactment making corresponding or different provision with respect to that matter or those matters, then, unless the contrary intention appears and in particular subject to any instrument under section 215, 216, 219 or 225 of this Act references in any enactment other than this Act, or in any instrument made under any enactment other than this Act, to the repealed enactment shall be construed as references to the enactment contained in or applied by this Act which makes the corresponding or different provision.

#### Textual Amendments

- F28** Words substituted by virtue of [Interpretation Act 1978](#) (c. 63), s. 25(2)

*Status: Point in time view as at 01/02/1991.*

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#### **Modifications etc. (not altering text)**

**C10** The text of ss. 130(3), 132(2), 134(2), 135(10), 138(2), 146(2)–(9), 147(2)(6)(7)(8), 155(2)(3)(5)(6)(7), 156(2)(3), 166(2), 170(2), 175, 184, 213(3), 237(1), Schs. 16, 19, 21 paras. 2–12 and Sch. 26 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

#### **Marginal Citations**

**M14** 1978 c. 30.

### **238 Short title, commencement and extent.**

- (1) This Act may be cited as the Local Government (Scotland) Act 1973.
- (2) This Act (except this section) shall come into operation on the appointed day, being such day as the Secretary of State may by order appoint, and different days may be appointed under this subsection for different provisions of this Act or for different purposes, or for the purposes of the same provision in relation to different cases.
- (3) This Act, except sections 92, 146(5) and 213 and paragraph 64 of Schedule 17 and Schedule 26<sup>F29</sup> . . . extends to Scotland only.

#### **Textual Amendments**

**F29** Words repealed by [House of Commons Disqualification Act 1975 \(c. 24\)](#), [Sch. 3](#)

#### **Modifications etc. (not altering text)**

**C11** Power of appointment conferred by s. 238(2) fully exercised: [S.I. 1973/1886](#), 2181

**Status:**

Point in time view as at 01/02/1991.

**Changes to legislation:**

Local Government (Scotland) Act 1973, Part XII is up to date with all changes known to be in force on or before 19 January 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.