



# 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**

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