



# Local Government etc. (Scotland) Act 1994

## 1994 CHAPTER 39

### PART I

#### LOCAL GOVERNMENT REORGANISATION

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

**C1** Pt. I (ss. 1-61) applied (1.4.1996) by 1990 c. 35, s. 21(5) (as inserted (1.4.1996) by 1996 c. 39, s. 180(1), Sch. 13 para. 164(2)(b); S.I. 1996/323, art. 4(1)(b)(c))

### CHAPTER 1

#### LOCAL GOVERNMENT AREAS, AUTHORITIES AND ELECTIONS

#### **1 Local government areas in Scotland.**

- (1) Scotland shall, in accordance with the provisions of this Part of this Act, have local government areas for the administration of local government on and after 1st April 1996.
- (2) Scotland shall be divided into the local government areas named in column 1 of Part I of Schedule 1 to this Act, and those areas shall comprise the areas described in column 2 of Part I.
- (3) On 1st April 1996—
  - (a) all local government areas existing immediately before that date which are regions or districts; and
  - (b) all regional and district councils,shall cease to exist.

*Status: Point in time view as at 01/04/2003.*

*Changes to legislation: There are currently no known outstanding effects for the Local Government etc. (Scotland) Act 1994, Part I. (See end of Document for details)*

(4) Part II of Schedule 1 (provisions as to boundaries) shall have effect.

## 2 Constitution of councils.

- (1) For every local government area there shall be a council consisting of a convener and councillors.
- (2) Subject to any provision of this Act [<sup>F1</sup>and of the <sup>M1</sup>Environment Act 1995], the council for each local government area shall on and after 1st April 1996 have all the functions exercised immediately before that date in relation to their area by any existing regional, islands or district council.
- (3) The council for each local government area shall be a body corporate by the name “The Council” with the addition of the name of the particular area, and shall have a common seal.

### Textual Amendments

**F1** Words in s. 2(2) inserted (1.2.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 232(1)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 2**

### Modifications etc. (not altering text)

**C2** S. 2(3) excluded (27.4.1997) by 1973 c. 65, s. 23(1A) (as inserted (27.4.1997) by 1997 c. 6, **ss. 1, 2(2)**)

### Marginal Citations

**M1** 1995 c. 25

## 3 Orkney, Shetland and Western Isles.

- (1) The islands councils of Orkney, Shetland and the Western Isles shall continue to exist as bodies corporate but, on and after 1st April 1996—
  - (a) they shall be known as “Orkney Islands Council”, “Shetland Islands Council” and “Western Isles Council”; and
  - (b) their areas shall be known as “Orkney Islands”, “Shetland Islands” and “Western Isles”,
 respectively.
- (2) The islands councils consisting of the councillors elected for the islands areas of Orkney, Shetland and the Western Isles at the ordinary election held in 1994 shall continue as councils until the second ordinary election of councillors for the new councils held under section 5 of this Act.

### Modifications etc. (not altering text)

**C3** S. 3(1)(a) excluded (27.4.1997) by 1973 c. 65, s. 23(1A) (as inserted (27.4.1997) by 1997 c. 6, **ss. 1, 2(2)**)

*Status: Point in time view as at 01/04/2003.*

*Changes to legislation: There are currently no known outstanding effects for the Local Government etc. (Scotland) Act 1994, Part 1. (See end of Document for details)*

#### **4 Convener and depute convener.**

- (1) The council of each local government area shall elect a convener from among the councillors.
- (2) A council may elect a member of the council to be depute convener.
- (3) Subject to the provisions of this section and of Schedule 2 to this Act, the standing orders of a council may make provision for—
  - (a) the duration of the term of office (which may not extend beyond [<sup>F2</sup>the day on which the poll is held at] the next ordinary election of the council); and
  - (b) the procedure for early removal from office, of the convener and depute convener.
- (4) The election of the convener shall be the first business transacted at the first meeting of the council held after an ordinary election of councillors and at that meeting, until the convener is elected, the returning officer or, failing him, such councillor as may be selected by the meeting shall preside.
- (5) A person holding the office of convener or depute convener shall be eligible for re-election but shall cease to hold office upon ceasing to be a councillor.
- (6) On a casual vacancy occurring in the office of convener, an election to fill the vacancy shall be held as soon as practicable by the council at a meeting of the council the notice of which specifies the filling of the vacancy as an item of business, and the depute convener or, failing him, a councillor selected by the meeting shall preside.
- (7) The convener of each of the councils of the cities of Aberdeen, Dundee, Edinburgh and Glasgow shall, with effect from 1st April 1996, be known by the title of “Lord Provost”, and the convener of each other council shall be known by such title as that council may decide:

Provided that no such other council may, without the consent of the Secretary of State, decide that their convener shall be known by the title of “Lord Provost”.
- (8) A council may pay the convener and depute convener, for the purpose of enabling each of them to meet the expenses of his office, such allowance as the council think reasonable.

#### **Textual Amendments**

**F2** Words in s. 4(3)(a) inserted (22.1.2002) by 2002 asp 1, s. 4(1)

#### **5 Elections and term of office of councillors.**

- (1) Councillors for each local government area shall be elected by the local government electors for that area in accordance with this Part of this Act and the Representation of the <sup>M2</sup>People Act 1983.
- (2) Notwithstanding the provisions of section 43 of that Act of 1983 (day of ordinary local elections in Scotland), the first ordinary election of councillors for each council other than the councils of Orkney Islands, Shetland Islands and Western Isles shall take place on 6th April 1995.

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*Changes to legislation: There are currently no known outstanding effects for the Local Government etc. (Scotland) Act 1994, Part I. (See end of Document for details)*

- (3) The second ordinary election of councillors shall take place in 1999, and ordinary elections shall take place [<sup>F3</sup>thereafter in the years in which, under section 2(2) of the Scotland Act 1998 (c.46), polls at ordinary general elections for membership of the Scottish Parliament fall to be held].
- (4) Councillors shall retire on the day [<sup>F4</sup>on which the poll is held at] the ordinary election next following the date on which they were elected.
- (5) Each local government area shall be divided into electoral wards, and each such ward shall return one councillor.
- (6) There shall be a separate election for each electoral ward.

#### Textual Amendments

- F3** Words in s. 5(3) substituted (22.1.2002) by 2002 asp 1, s. 1
- F4** Words in s. 5(4) substituted (22.1.2002) by 2002 asp 1, s. 4(2)

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

- C4** S. 5 applied (1.4.1996) by 1973 c. 65, s. 235(1) (as substituted (1.4.1996) by 1994 c. 39, s. 180(1), Sch. 13 para. 92(66)(b); S.I. 1996/323, art. 4(1)(b)(c))
- S. 5 applied (1.4.1996) by 1988 c. 47, s. 22(2) (as substituted (1.4.1996) by 1994 c. 39, s. 180(1), Sch. 13 para. 158(3)(b); S.I. 1996/323, art. 4(1)(b)(c))

#### Marginal Citations

- M2** 1983 c. 2.

## 6 Date of elections.

For subsection (1) of section 43 of the Representation of the <sup>M3</sup>People Act 1983 (day of ordinary local elections in Scotland) substitute—

“(1) In every year in which ordinary elections of councillors for local government areas in Scotland are held, the day of election is—

- (a) the first Thursday in May; or
- (b) such other day as may be fixed by the Secretary of State by order made by statutory instrument not later than 1st February in the year preceding the year or, in the case of an order affecting more than one year, the first year in which the order is to take effect.

(1A) An order made under subsection (1)(b) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.”.

#### Marginal Citations

- M3** 1983 c. 2.

## 7 Establishment of new local authorities and supplementary provisions.

- (1) Schedule 2 to this Act shall have effect with respect to the establishment of the new local authorities, the suspension of elections of existing authorities and related matters.

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- (2) This Part of this Act shall have effect, in relation to such establishment, subject to the provisions of that Schedule.
- (3) Schedule 2 shall not apply in relation to the councils of Orkney Islands, Shetland Islands and Western Isles.

## CHAPTER 2

### STAFF

#### 8 Transfer of employees.

- (1) Subject to the provisions of this section, the Secretary of State may by order make provision with respect to—
  - (a) the transfer of employees from an existing local authority to a new authority with effect from 1st April 1996; and
  - (b) any matters arising out of or related to such transfer.
- (2) An order under this section may, without prejudice to the generality of subsection (1) (a) above—
  - (a) make provision as to the new authority to which groups of employees, or particular employees, are to be transferred;
  - (b) prescribe a general rule or rules by which the transfer of employees, or of specified groups of employees, can be determined.
- (3) Each regional and district council shall, in accordance with the provisions of an order made under this section, prepare a scheme in relation to the transfer under or by virtue of this Act of their employees.
- (4) No scheme under subsection (3) above shall be made without the consent of the new authority or authorities, or of the new water and sewerage authority or authorities (within the meaning of Part II of this Act), to whom the employees concerned are to be transferred or, failing such consent, without the consent of the Secretary of State.
- (5) The Secretary of State shall by order under this section provide for the transfer of all fire and police personnel employed by an existing local authority for the purposes of a fire brigade or police force to the new authority which will, after 1st April 1996, have responsibility as respects that brigade or force.
- (6) An order under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) In this section—

“existing local authority” includes a joint committee and a joint board but does not, subject to any other provision of this Act, include an islands authority;

“fire personnel” means any persons employed by an existing local authority for the sole purpose of assisting a fire brigade maintained by that authority;

“new authority” means any of the authorities constituted under section 2 of this Act (other than Orkney Islands, Shetland Islands or Western Isles), a residuary body and a joint board; and

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“police personnel” means any persons employed by virtue of section 9 of the <sup>M4</sup>Police (Scotland) Act 1967 (employees other than constables).

#### Marginal Citations

M4 1967 c. 77.

### 9 Effect of section 8 on contracts of employment.

- (1) This section applies to any person transferred from an existing local authority to a new authority under or by virtue of an order under section 8 of this Act.
- (2) The contract of employment between such a person (the “employee”) and his present employer shall not be terminated by the abolition of that employer but shall have effect from 1st April 1996 (the “transfer date”) as if originally made between the employee and such new authority (his “new employer”) as may be specified in relation to him in an order made under section 8 of this Act.
- (3) Without prejudice to subsection (2) above—
  - (a) all the present employer’s rights, powers, duties and liabilities under or in connection with a contract to which that subsection applies shall by virtue of this section be transferred on the transfer date to the new employer; and
  - (b) anything done before the transfer date by or in relation to the present employer in respect of that contract or the employee shall be deemed after that date to have been done by or in relation to the new employer.
- (4) Subsections (2) and (3) above are without prejudice to any right of an employee to terminate his contract of employment if a substantial change is made to his detriment in his terms and conditions of employment, but no such right shall arise by reason only of the change of employer effected by section 8 of this Act.
- (5) In this section—
 

“existing local authority” includes a joint committee and a joint board but does not, subject to any other provision of this Act, include an islands authority; and

“new authority” means any of the authorities constituted under section 2 of this Act (other than Orkney Islands, Shetland Islands or Western Isles), a residuary body and a joint board.

### 10 Continuity of employment.

- (1) This section applies to a person who at any time after the passing of this Act ceases to be employed by an existing local authority (his “former employer”) if—
  - (a) the termination of his employment is attributable, directly or indirectly, to any provision made by or under this Act;
  - (b) he is subsequently employed by another person (his “new employer”); and
  - (c) by virtue of [F5section 138 of the M5Employment Rights Act 1996] (renewal or re-engagement) that subsequent employment precludes his receiving any redundancy payment under [F6Part XI] of that Act.
- (2) Where this section applies to a person, [F7Chapter I of Part XIV of the Employment Rights Act 1996] (computation of a period of employment for the purposes of that Act)

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shall have effect in relation to that person as if it included the following provisions, that is to say—

- (a) the period of employment of that person with his former employer shall count as a period of employment with his new employer; and
  - (b) the change of employer shall not break the continuity of the period of employment.
- (3) Where this section applies to a person, the period of his employment with his former employer shall count as a period of employment with his new employer for the purposes of any provision of his contract of employment with his new employer which depends on his length of service with that employer.
- (4) In this section “existing local authority” includes a joint committee and a joint board but does not, subject to any other provision of this Act, include an islands authority.

#### Textual Amendments

- F5** Words in s. 10(1)(c) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, Sch. 1 para. 66(2)(a)(i)
- F6** Words in s. 10(1)(c) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, Sch. 1 para. 66(2)(a)(ii)
- F7** Words in s. 10(2) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, Sch. 1 para. 66(2)(b)

#### Marginal Citations

- M5** 1996 c. 18

## 11 Remuneration of employees of local authorities.

- (1) For the purposes of this section the Secretary of State may, after consulting such associations of local authorities as appear to him to be appropriate—
- (a) designate such existing body as he considers appropriate; or
  - (b) by order made by statutory instrument establish a new body,
- (in this section referred to, in either case, as “the advisory body”) to consider any increase made or proposed to be made by an authority in the remuneration of any of their employees.
- (2) An order under subsection (1)(b) above—
- (a) may make provision as to the constitution and membership of the body established; (b) may include provision as to the employment of staff and the remuneration and superannuation of the members and staff of the body; and
  - (c) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) For the purpose of enabling them to carry out their functions under this section, the advisory body shall consult and seek information from authorities and, if requested to do so by the advisory body, the Secretary of State may give a direction to any such authority requiring them to furnish to the advisory body such information as may be specified in the direction relating to the remuneration and other terms and conditions of employment of such employees of the authority as may be so specified.
- (4) If it appears to the advisory body that an authority have fixed or propose to fix for any employee or class of employee of theirs a rate of remuneration which, having regard to any recommended levels of remuneration formulated on a national basis by representatives of local authorities and employees of local authorities, is greater

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than that which the advisory body consider appropriate for that employee or class of employees, they shall notify the authority concerned and recommend to them the rate of remuneration which should be paid to the employee or class of employees concerned.

- (5) If it appears to the advisory body that an authority to whom they have made a recommendation under subsection (4) above are not complying with that recommendation, then, after giving notice in writing to the authority concerned of their intention to do so, they may refer the matter to the Secretary of State; and on such a reference the Secretary of State, after consultation with such associations of local authorities and of employees of local authorities as he considers appropriate in relation to the employee or class of employees concerned, may give a direction to that authority requiring them, with effect from such date as may be specified in the direction (not being earlier than the date on which notice was given to them by the advisory body), to pay such employee or class of employees of theirs as was the subject of the recommendation and as may be so specified remuneration at the rate recommended by the advisory body under subsection (4) above and specified in the direction.
- (6) An authority to whom a direction is given under subsection (3) or subsection (5) above shall comply with the direction.
- (7) If at any time in the period of three months beginning on 1st April 1996 it appears to the advisory body that the remuneration paid at any time before that date to any employee or class of employees of an existing local authority was such that, if that authority had not ceased to exist, the advisory body would have made a recommendation to the authority under subsection (4) above or, having made such a recommendation before that date, would have referred the matter to the Secretary of State under subsection (5) above, they shall notify the Secretary of State and report to him the rate of remuneration which in their opinion should have been paid to the employee or class of employees concerned immediately before 1st April 1996 or such earlier date as may be specified in the report, being the date on which the employee or employees ceased to be employed by the local authority concerned.
- (8) On receiving a report under subsection (7) above the Secretary of State may, after such consultation as is specified in subsection (5) above, by order made by statutory instrument provide that, for the purposes of the provisions of this Act, or of any regulations made under section 24 of the <sup>M6</sup>Superannuation Act 1972 (compensation for loss of office etc.), relating to transfer of officers and compensation for loss of office, the employee or class of employees to whom the report relates and who are specified in the order shall be deemed to have been receiving, immediately before 1st April 1996 or such earlier date as may be specified in the report, remuneration at the rate stated in the report and specified in the order.
- (9) An order made under subsection (8) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (10) In this section—
- “authority” means an existing local authority and a new authority;
  - “existing local authority” includes a joint committee and a joint board but does not include an islands authority; and
  - “new authority” means any of the authorities constituted under section 2 of this Act (other than Orkney Islands, Shetland Islands and Western Isles) and a joint board.



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- (11) The Secretary of State may not give a direction under subsection (5) above nor make an order under subsection (8) above after 31st March 1997.

#### Marginal Citations

M6 1972 c. 11.

## 12 Staff commission.

- (1) The Secretary of State shall, after such consultation, whether before or after the passing of this Act, as he thinks fit, by order establish a staff commission for the purpose of carrying out such functions in relation to the staff and staffing of authorities as he may consider appropriate.
- (2) Without prejudice to the generality of subsection (1) above, an order under this section may confer on the staff commission the functions of—
- (a) considering and keeping under review the arrangements for the recruitment of staff by new authorities and for the transfer in consequence of this Act or of any instrument made under it of staff employed by existing local authorities which cease to exist by virtue of Chapter 1 of this Part of this Act;
  - (b) considering such staffing problems arising out of, in consequence of or in connection with any provision of or instrument made under this Act as may be referred to them by the Secretary of State or by any authority;
  - (c) advising the Secretary of State as to the steps necessary to safeguard the interests of such staff; and
  - (d) advising authorities, either by the commission or by persons nominated by them.
- (3) An order under this section may make provision as to the constitution and membership of the commission, the appointment and removal from office by the Secretary of State of the chairman and members of the commission, the employment of staff and the remuneration and superannuation of the members and staff of the commission.
- (4) The Secretary of State may give directions—
- (a) to the staff commission as to—
    - (i) the carrying out by them of their functions; and
    - (ii) their procedure;
  - (b) to any authority with respect to the furnishing by them of information requested by the commission; and
  - (c) to any authority with respect to—
    - (i) the implementation by them of any advice given by, or by persons nominated by, the commission; and
    - (ii) the payment by them of any expenses incurred by the commission in doing anything requested by them.
- (5) Any expenses incurred by the staff commission and not recovered by them from an authority shall be paid by the Secretary of State out of money provided by Parliament.
- (6) The Secretary of State may by order provide for the winding up of the commission and the disposal of their assets.

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*Status: Point in time view as at 01/04/2003.*

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(7) An order under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

(8) In this section—

“authority” means an existing local authority and a new authority;

“existing local authority” includes a joint committee and a joint board but does not, except as may be provided by any other provision of this Act, include an islands authority; and

“new authority” means any of the authorities constituted under section 2 of this Act (other than Orkney Islands, Shetland Islands or Western Isles), a residuary body and a joint board.

### **13 Compensation for loss of office or diminution of emoluments.**

(1) This section applies to any person who at any time after the passing of this Act is in the service of—

- (a) an existing local authority;
- (b) a new authority; or
- (c) a residuary body,

and who suffers loss of employment or diminution of emoluments which is attributable to any provision made by, under or by virtue of this Act.

(2) Where the Secretary of State makes provision by regulations under section 24 of the <sup>M7</sup>Superannuation Act 1972 (compensation for loss of office etc.) in relation to compensation in respect of any such loss or diminution as is referred to in subsection (1) above, such compensation shall be paid only in accordance with those regulations; and accordingly none of the bodies mentioned in subsection (1) above shall pay any such compensation under any other statutory provision, by virtue of any provision in a contract, or otherwise.

(3) Subsection (2) above shall not preclude the making of any payment to which a person is entitled by virtue of contractual rights acquired by him on or before 9th December 1993.

(4) Regulations under the said section 24 shall not provide compensation for a person to whom this section applies in respect of any such loss or diminution as is mentioned in subsection (1) above so far as attributable to the termination (without prejudice to the provision of compensation where the said loss or diminution is attributable otherwise than to such termination) on or before 1st April 1996 of a contract made after 9th December 1993 which provides for the employment of that person for a fixed term extending beyond 1st April 1996.

(5) For the purpose of determining under [<sup>F8</sup>section 138 or 141 of the <sup>M8</sup>Employment Rights Act 1996 (renewal of contract or re-engagement)] —

- (a) whether the provisions of a new contract offered to a person employed by any such body as is mentioned in subsection (1) above differ from the corresponding provisions of his previous contract; and
- (b) whether employment under the new contract is suitable in relation to that person,

there shall be treated as forming part of the remuneration payable under the new contract any compensation to which that person is or, if he accepted the offer, would be entitled in accordance with this section.

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(6) Except as provided in subsection (5) above nothing in this section shall be construed as affecting any entitlement to a redundancy payment under [<sup>F9</sup>Part XI of the Employment Rights Act 1996] or to any payment by virtue of any provision of the <sup>M9</sup>Superannuation Act 1972 other than the said section 24.

(7) In this section—

“existing local authority” includes a joint committee and a joint board but does not, except as may be provided by any other provision of this Act, include an islands authority; and

“new authority” means any of the authorities constituted under section 2 of this Act (other than Orkney Islands, Shetland Islands or Western Isles) and a joint board.

#### Textual Amendments

**F8** Words in s. 13(5) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 1 para. 66(3)(a)**

**F9** Words in s. 13(6) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 1 para. 66(3)(b)**

#### Marginal Citations

**M7** 1972 c. 11.

**M8** 1996 c. 18

**M9** 1972 c. 11.

## 14 Employment by new authorities.

(1) If a new authority enter into a contract of employment with a person who has received or is entitled to receive a redundancy payment under [<sup>F10</sup>Part XI of the <sup>M10</sup>Employment Rights Act 1996]—

(a) by reason of his dismissal at any time—

(i) after the passing of this Act by a regional or district council; or

(ii) after the passing of this Act and before 1st April 1996 by a joint committee or a joint board; or

(b) by reason of his having been employed, immediately before 1st April 1996, by such a council, committee or board under a contract of employment which would have continued but for the abolition of such councils, committees or boards on that date and who is not transferred to a new authority by virtue of an order under section 8 of this Act,

the authority shall, if the Secretary of State so directs, pay to him, or to such person as he may direct, an amount equal to the redundancy payment.

(2) The Secretary of State shall not give a direction under subsection (1) above in respect of the employment of any person by a new authority if the authority satisfy him—

(a) that they could not reasonably have made that person an offer of employment on the terms and conditions of the contract first mentioned in that subsection which, if accepted by him, would have precluded his entitlement to the redundancy payment; or

(b) that the authority made such an offer but that the person concerned acted reasonably in refusing it; or

(c) that he could reasonably have refused such an offer if it had been made by the authority.

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- (3) In any case in which an amount is payable by a new authority under subsection (1) above there shall also be payable by them to the Secretary of State or to such person as he may direct an amount equal to any compensation under the regulations referred to in section 13(2) of this Act which has been paid or is payable to the person concerned before the time when he enters into the contract.
- (4) In this section “new authority” means any of the authorities constituted under section 2 of this Act and a joint board.

#### Textual Amendments

**F10** Words in s. 14(1) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, Sch. 1 para. 66(4)

#### Marginal Citations

**M10** 1996 c. 18

## CHAPTER 3

### PROPERTY

#### 15 Transfer of property.

- (1) Subject to subsection (5) below, the Secretary of State may by order provide that any property vested in one or more existing local authorities immediately before 1st April 1996 shall on that date be transferred to and vest in such new authority or authorities as may be specified in or determined under the order.
- (2) An order under this section may include provision for the transfer of all rights, liabilities and obligations of an existing local authority on 1st April 1996 to such new authority or authorities as may be specified in or determined under the order.
- (3) An order under this section may make different provision in relation to—
- different items or categories of property;
  - different, or different categories of, rights, liabilities or obligations; and
  - different authorities.
- (4) The power to transfer property conferred by this section includes power to transfer property which is held by an existing local authority as part of the common good, but such property may not be transferred to a residuary body and, in administering such property, any authority to which it is transferred shall—
- except in the case of the councils for Aberdeen, Dundee, Edinburgh and Glasgow, have regard to the interests of the inhabitants of the area to which the common good related prior to 16th May 1975; and
  - in the case of the councils for Aberdeen, Dundee, Edinburgh and Glasgow, have regard to the interests of all the inhabitants of their areas.
- (5) This section does not apply to any property which is transferred under or by virtue of section 16, 17 or 91 of this Act.

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*Status: Point in time view as at 01/04/2003.*

*Changes to legislation: There are currently no known outstanding effects for the Local Government etc. (Scotland) Act 1994, Part 1. (See end of Document for details)*

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- (6) Orders under this section shall be made by statutory instrument, and a statutory instrument containing an order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) For the purposes of this section—
- “existing local authority” includes a joint committee and a joint board but does not, subject to any other provision of this Act, include an islands authority;
  - “new authority” means any of the authorities constituted under section 2 of this Act, and includes a joint board and a residuary body; and
  - “property” includes any records held by, or in the custody of, an existing local authority.

## 16 Property held on trust.

- (1) All property held on trust immediately before 1st April 1996 by—
- (a) an existing local authority; or
  - (b) a councillor and the proper officer or a specified officer of such an authority,
- shall on that day be transferred to and vest (subject to the same trust) in the appropriate new authority.
- (2) The authority 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 1st April 1996 by the persons mentioned in subsection (1)(b) above, the authority shall nominate the proper officer as one of the trustees.
- (3) All property held on trust immediately before 1st April 1996 by a specified officer of an existing local authority shall on that date be transferred to and vest (subject to the same trust) in the proper officer of the appropriate new authority.
- (4) Where, immediately before 1st April 1996, property is held on trust by the holder of an office, whether as a councillor, the proper officer or a specified officer, connected with an existing local authority or authorities and any other person, the appropriate new authority or authorities 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 authority or authorities shall nominate their proper officer or the proper officer of one of them as one of the trustees.
- (5) Where the area of the existing local authority in which, or in any councillor or officer of which, any trust property is vested falls entirely within the area of a new authority, that new authority is the appropriate new authority for the purposes of this section.
- (6) Where the area of the existing local authority in which, or in any councillor or officer of which, any trust property is vested falls within the area of two or more new authorities, those authorities may agree in writing as to which of them is or are the appropriate new authority or authorities for the purposes of this section; and such agreement shall be conclusive as to the vesting of the property in one or more of those new authorities.
- (7) Where the authorities mentioned in subsection (6) above cannot reach agreement as to the vesting of any trust property any of them may refer the matter to the Secretary of State, who may give a direction as to which is the appropriate authority or, as the

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case may be, which are the appropriate authorities; and a direction by the Secretary of State under this subsection shall be conclusive as to the vesting of the trust property in the new authority or authorities concerned.

- (8) An agreement under subsection (6) above and a direction under subsection (7) above may relate to trust property generally, or to particular items, types or classes of such property, or to trust property situated in a particular part of an authority's area.
- (9) In this section—  
     “existing local authority” includes a joint committee and a joint board but does not include an islands authority; and  
     “new authority” includes any of the authorities constituted under section 2 of this Act (other than Orkney Islands, Shetland Islands or Western Isles) and a joint board.
- (10) This section shall not apply to property which is subject to section 17 of this Act.

## **17 Educational endowments.**

- (1) Where, immediately before 1st April 1996, educational endowments are to any extent vested in an existing local authority, the Secretary of State may by order make schemes providing for such endowments, on that date, to be transferred to and vest to the same extent in such new authority or authorities as may be specified in or determined under the scheme.
- (2) A scheme made under this section may provide for educational endowments, to the extent that they are vested by virtue of his office in the holder of an office connected with an existing local authority or in a person nominated by such an authority, to be transferred to and vest in a person holding an office in, or nominated by, such new authority or authorities as may be specified in or determined under the scheme.
- (3) A scheme under this section may provide for powers with respect to an educational endowment which are vested in an existing local authority or, by virtue of his office, in the holder of an office connected with such an authority or in a person nominated by such an authority, to be transferred to and vest in such new authority or authorities or, as the case may be, in a person holding office connected with, or nominated by, such an authority, as may be specified in or determined under the scheme.
- (4) A scheme under this section may provide for any rights to be paid money out of an educational endowment which are vested in an existing local authority to be transferred to and vest in such new authority or authorities as may be specified in or determined under the scheme.
- (5) The Secretary of State may require any existing local authority to provide him, in such form as he may specify, with their proposals for the transfer, in accordance with the provisions of this section, of any such educational endowments, powers or rights as are mentioned in subsections (1), (2), (3) or (4) above.
- (6) Subject to subsection (7) below, a scheme under this section may make such provision in relation to an educational endowment as the Secretary of State considers appropriate and, without prejudice to the generality of the foregoing, may include provision for—  
     (a) amending or revoking the governing instrument of an endowment;  
     (b) grouping, amalgamating, combining or dividing any endowments;

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- (c) the purposes to which, and the conditions under which, any such endowments may be applied;
  - (d) incorporating or establishing new governing bodies, or dissolving, combining or uniting any governing bodies;
  - (e) the powers of the governing body of any endowment.
- (7) In exercising his powers under subsection (6) above, the Secretary of State shall make no more changes with respect to any endowment than appear to him to be necessary or expedient in consequence of the alteration of local government areas effected by this Part of this Act.
- (8) Schemes under this section may make different provision in relation to different endowments or categories of endowment, different provision in respect of different items or categories of property, rights, liabilities and obligations, and different provision in respect of different authorities.
- (9) Subject to the provisions of the governing instrument of an educational endowment (including such an instrument made or amended by a scheme under this section), where, as the result of the election of a new authority occurring after 1st April 1996, it is necessary for a person to be nominated by the authority or by a committee thereof to be vested (to any extent) with the endowment, in terms of subsection (2) above, or to be vested with any power, in terms of subsection (3) above, that person shall be so nominated at the first meeting of the authority or committee held after it has been elected or appointed; and in such a case the person who (to the said extent) was last vested with the endowment or, as the case may be, who was last vested with the power, before the meeting shall continue therein until the date of the meeting.
- (10) Section 19 of this Act applies in relation to educational endowments as it applies in relation to the property referred to in that section.
- (11) An order under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (12) Expressions used in this section and in Part VI of the <sup>M11</sup>Education (Scotland) Act 1980 have the same meaning in this section as in that Part.
- (13) Nothing in this section shall affect any other power to reorganise any educational endowment or otherwise to alter the provisions of any trust.
- (14) In this section—
- “authority” includes an existing local authority and a new authority;
  - “existing local authority” includes a joint committee and a joint board but does not include an islands authority; and
  - “new authority” means any of the authorities constituted under section 2 of this Act (other than Orkney Islands, Shetland Islands or Western Isles) and a joint board.

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**Marginal Citations**

**M11** 1980 c. 44.

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## 18 Residuary bodies.

- (1) The Secretary of State may by order establish one or more bodies, to be known as “residuary bodies”, for the purpose of—
  - (a) taking over and exercising such functions with respect to such property, rights and liabilities as may be transferred under section 15 of this Act; and
  - (b) exercising such other functions, including, without prejudice to the generality of the foregoing, any functions which may be conferred on a property commission under section 19 of this Act,
 as he may so prescribe.
- (2) An order under this section may apply to a residuary body, with such modifications as may be specified, any enactment which applies to a local authority in Scotland.
- (3) The Secretary of State may give directions to a residuary body as to—
  - (a) the carrying out by them of any of their functions; and
  - (b) the exercise by them of any of the powers conferred on them by or under this section.
- (4) The Secretary of State may require a residuary body to make payments of such amounts, and at such times, as he may specify to a local authority or a joint board.
- (5) The Secretary of State may require any local authority in the area in which a residuary body operates to meet such proportion of their expenses as he may determine.
- (6) Any expenses incurred by a residuary body shall, in so far as they are not otherwise met, be paid by the Secretary of State out of money provided by Parliament.
- (7) The Secretary of State may direct a residuary body to prepare, within such time as he may specify in the direction, a scheme for their winding up and for the disposal of their property, rights and liabilities.
- (8) Subject to subsection (9) below, where a residuary body have prepared a scheme such as is mentioned in subsection (7) above, the Secretary of State may by order give effect to that scheme, subject to any modifications he considers appropriate, and any such order may—
  - (a) include provision for the disposal, whether by transfer or otherwise, of the body’s property; and
  - (b) contain such supplementary and transitional provision as the Secretary of State thinks necessary or expedient.
- (9) Where a residuary body is wound up in accordance with an order under subsection (8) above sections 8, 9, 10 and 13 of this Act shall apply, with any necessary modifications, to the staff of the residuary body as they apply to the staff of an existing local authority.
- (10) Schedule 3 to this Act has effect in relation to residuary bodies.
- (11) An order under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

## 19 Property commission.

- (1) Subject to subsection (2) below and after such consultation, whether before or after the passing of this Act, as he considers appropriate, the Secretary of State may by order establish a property commission for the purpose of—



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- (a) advising authorities on matters relating to property to be transferred from existing local authorities to new authorities;
  - (b) advising the Secretary of State on the general principles on which such property should be transferred; and
  - (c) carrying out such other functions in relation to the transfer of property as may be specified in the order,
- and for the purposes of this section “property” includes property held on trust to which section 16 of this Act applies.
- (2) An order under this section may make provision as to the constitution and membership of the commission, the appointment and removal from office by the Secretary of State of the chairman and members of the commission, the employment of staff and the remuneration and superannuation of the members and staff of the commission.
- (3) The Secretary of State may give directions—
- (a) to the commission as to the carrying out by them of their functions;
  - (b) as to the area or areas in which the commission are to carry out their functions;
  - (c) as to the procedure to be followed by the commission;
  - (d) for the supplying of information to the commission by any authority; and
  - (e) to any authority—
    - (i) as to the implementation of advice given to them by the commission; and
    - (ii) as to the payment by them of any expenses incurred by the commission in doing anything requested of them by that authority.
- (4) The Secretary of State may by order provide for the winding up of the commission and the disposal of their assets.
- (5) Any expenses incurred by the property commission and not recovered by them from an authority shall be paid by the Secretary of State out of money provided by Parliament.
- (6) An order under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) In this section—
- “authority” includes an existing local authority and a new authority;
  - “existing local authority” includes a joint committee and a joint board but does not include an islands authority; and
  - “new authority” means any of the authorities constituted under section 2 of this Act (other than Orkney Islands, Shetland Islands and Western Isles) and a joint board.

## CHAPTER 4

### GENERAL

#### **20 Joint committees and joint boards.**

After section 62 of the 1973 Act (standing orders, etc.) there shall be inserted—

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## **“62A Incorporation of joint committees.**

- (1) Where—
- (a) arrangements are made (whether under this Act or any other enactment) for two or more local authorities (in this Part of this Act referred to as “the relevant authorities”) to discharge any of their functions, or any functions in any area, jointly;
  - (b) the relevant authorities have—
    - (i) appointed, or propose to appoint, a joint committee to discharge those functions; and
    - (ii) advertised their proposals in accordance with subsection (2) below; and
  - (c) application is made, in writing, to the Secretary of State by the relevant authorities for the incorporation of that joint committee (or proposed joint committee) as a joint board to carry out those functions,
- the Secretary of State may by order establish a joint board in accordance with this section to discharge those functions.
- (2) Before applying to the Secretary of State under subsection (1)(c) above, the relevant authorities shall place in at least one daily newspaper circulating in their areas an advertisement—
- (a) giving brief details of what they propose to do;
  - (b) giving an address to which representations about the proposal may be sent; and
  - (c) fixing a date, being not less than 8 weeks after the date on which the advertisement appears, within which representations may be made,
- and they shall include with their application evidence that an advertisement has been placed.
- (3) Where any representations are timeously made in response to an advertisement placed in accordance with subsection (2) above, the relevant authorities shall consider them and shall include with their application a statement that they have done so.
- (4) An order under subsection (1) above shall delegate to the joint board such of the functions of the relevant authorities as may be specified in the order and may include provision with respect to—
- (a) the constitution and proceedings of the joint board;
  - (b) matters relating to the membership of the joint board;
  - (c) the transfer to the joint board of any property, rights and liabilities of the relevant authorities;
  - (d) the transfer to the joint board of any staff of the relevant authorities;
  - (e) the supply of services or facilities by the relevant authorities to the joint board,
- and may, without prejudice to the generality of paragraphs (a) to (e) above, apply (with or without modifications) any of the provisions of Part V of this Act to a joint board as those provisions apply to a joint committee.
- (5) A joint board established under this section shall be a body corporate and shall have a common seal.

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- (6) An order under subsection (1) above shall be in terms agreed by the relevant authorities.
- (7) An instrument containing an order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

### **62B Power of Secretary of State to establish joint boards.**

- (1) Where the Secretary of State considers—
  - (a) that any functions, or any functions in any area, of the relevant authorities should be discharged jointly by those authorities; and
  - (b) that arrangements, or satisfactory arrangements, for the joint discharge of those functions—
    - (i) have not been made by the relevant authorities; or
    - (ii) have ceased to be in operation,he may, after consulting the relevant authorities, by order establish a joint board in accordance with this section.
- (2) Subsections (4) and (5) of section 62A of this Act shall apply to a joint board established under this section as they apply to a joint board established under that section with the substitution of a reference to subsection (1) of this section for the reference to subsection (1) of that section.
- (3) No order shall be made under subsection (1) above unless a draft of the instrument containing the order has been laid before, and approved by resolution of, each House of Parliament.

### **62C Further provisions relating to joint boards.**

- (1) Where a joint board has been established by order under section 62A or 62B of this Act, the Secretary of State may by order provide—
  - (a) for excluding any functions, or any functions in any area, from those specified in the order establishing that joint board; and
  - (b) for the dissolution of the joint board.
- (2) An order shall not be made under subsection (1) above unless the Secretary of State has consulted the relevant authorities.
- (3) An instrument containing an order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) The power to make an order under this section or section 62A or 62B of this Act shall include power to make such transitional, incidental, supplemental or consequential provision as the Secretary of State thinks necessary or expedient.
- (5) An order under this section or section 62A or 62B of this Act may, for the purpose of making such provision as is mentioned in subsection (4) above—
  - (a) apply with or without modifications;
  - (b) extend, exclude or amend; or
  - (c) repeal or revoke with or without savings,any enactment or any instrument made under any enactment.”.

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## **21 Application of section 211 of the 1973 Act to joint boards.**

In section 211 of the 1973 Act (provisions for default of local authority), after subsection (4) insert—

“(5) The provisions of this section shall apply to a joint board as they apply to a local authority.”.

## **22 Community councils.**

- (1) Subject to subsection (2) below, schemes for the establishment of community councils made and approved under section 52 of the 1973 Act, including any such schemes as amended by virtue of section 53 of that Act, which are effective immediately before 1st April 1996 shall continue to have effect in respect of the area, or part of an area, to which they apply on and after that date.
- (2) Without prejudice to their duty under section 53 of the 1973 Act, on and after 1st April 1996, a local authority may revoke a scheme (or an amended scheme) such as is mentioned in subsection (1) above in so far as it relates to their area and make a new scheme in accordance with this section.
- (3) Where a local authority propose to make a new scheme such as is mentioned in subsection (2) above—
  - (a) they shall give public notice of their intention to revoke the existing scheme and make a new scheme for the establishment of community councils, and any such notice shall invite the public, within a period of not less than eight weeks from the date of the notice, to make suggestions as to the areas and composition of the community councils;
  - (b) after considering suggestions made under paragraph (a) above, the local authority shall prepare and give public notice of a draft scheme which shall contain—
    - (i) a map showing the boundaries of the proposed areas of community councils and their populations, and the boundaries of any area for which the local authority consider a community council to be unnecessary;
    - (ii) where a local authority consider that a community council is unnecessary for any area, a statement of their reasons for arriving at that conclusion;
    - (iii) provisions relating to qualifications of electors, elections or other voting arrangements, composition, meetings, financing and accounts of community councils;
    - (iv) provisions concerning the procedures to be adopted by which the community councils on the one hand and the local and public authorities with responsibilities in the areas of the community councils on the other will keep each other informed on matters of mutual interest; and
    - (v) such other information as, in the opinion of the local authority, will help the public to make a reasonable appraisal of the scheme;
  - (c) the notice mentioned in paragraph (b) above shall invite the public, within a period of not less than eight weeks from the date of the notice, to make representations to the local authority as respects the draft scheme;

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- (d) after considering any representations made under paragraph (c) above, the local authority may, after giving public notice of the amendments to the proposals and a further invitation to make representations, amend the draft scheme to take account of those representations and adopt it;
- (e) the local authority shall give public notice of the scheme in its adopted form together with public notice of such a scheme as it applies to each proposed area, by exhibition in that area, and any such notice shall contain an invitation to electors in the area concerned to apply in writing to the authority for the establishment of a community council in accordance with the scheme.

### **23 Duty to prepare decentralisation schemes.**

- (1) Every council shall have a duty to prepare a draft decentralisation scheme for their area in accordance with this section.
- (2) A draft decentralisation scheme shall contain a council's proposals for the administration of their functions within the whole area of the council and shall specify the date or dates by which such a draft scheme shall be implemented and, without prejudice to the generality of the foregoing, may include provision as to—
  - (a) arrangements for the holding of meetings of the council (or any committee or sub-committee of the council) at particular places within the area of the council;
  - (b) the establishment of committees for particular areas and the delegation to those committees (under section 56 of the 1973 Act) of specified functions of the council;
  - (c) the location of offices of the council within the council's area, the staffing of such offices and the delegation to members of staff (under the said section 56) of specified functions;
  - (d) the provision of facilities at particular places within the area of the council where advice may be obtained on services provided by the council.
- (3) Every council shall, before 1st April 1997, give public notice of the fact that they have prepared a draft decentralisation scheme and of the places within their area where copies of the draft scheme may be inspected, and any such notice shall invite the public, within a period of not less than eight weeks from the date of the notice, to make to the council representations as regards the draft scheme.
- (4) Every council shall, during the period mentioned in subsection (3) above, consult the community councils within their area about the draft scheme.
- (5) After considering any representations made under subsection (3) or (4) above, the council may amend the draft scheme (whether to take account of those representations or otherwise) and shall adopt the scheme.
- (6) After the scheme has been adopted, the council shall—
  - (a) send a copy of the scheme in its adopted form to the Secretary of State; and
  - (b) give public notice of such scheme.
- (7) Where a scheme has been adopted, it shall be the duty of the council concerned to implement the scheme by the date or dates specified in the scheme.
- (8) A council may amend a scheme adopted under this section or revoke and replace such a scheme but the amended scheme or, as the case may be, new scheme shall be adopted

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in accordance with the provisions of this section, subject to such modifications as are necessary.

- (9) The Secretary of State may, after consulting such associations of local authorities and such other persons as appear to him to be appropriate, issue guidance with respect to the form and content of decentralisation schemes.
- (10) A council shall take account of any guidance issued under subsection (9) above.

## CHAPTER 5

### FINANCE

#### *Transitional provisions*

#### **24 Transitional provisions: finance.**

After section 94 of the 1992 Act insert—

##### **“94A Transitional provisions.**

- (1) The Secretary of State may, after consulting such associations of local authorities as appear to him to be appropriate, specify in a report, as regards the financial year 1996-97 and any local authority, the amount which in his opinion should be used as the basis of comparison for the purposes of paragraph 1(1) of Schedule 7 to this Act.
- (2) A report under this section—
- (a) shall contain such explanation as the Secretary of State considers desirable of the calculation by him of the amount mentioned in subsection (1) above; and
  - (b) shall be laid before the House of Commons.
- (3) A report under this section may relate to two or more authorities and may be amended by a subsequent report under this section.
- (4) If a report under this section is approved by resolution of the House of Commons, paragraph 1(1) of Schedule 7 to this Act shall have effect, as regards the financial year 1996-97 and any authority to which the report relates, as if the amount mentioned in subsection (1) above were the basis of comparison there referred to.
- (5) This section shall not apply in relation to Orkney Islands, Shetland Islands and Western Isles.”.

#### **25 Financing of new authorities prior to 1st April 1996.**

- (1) The Secretary of State may with the consent of the Treasury make grants of such amounts, and subject to such conditions, to local authorities as he considers appropriate.
- (2) A local authority may with the consent of the Secretary of State (who shall in turn seek the consent of the Treasury) borrow by way of temporary loan or overdraft from

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a bank or otherwise any sums which they may temporarily require for the purpose of defraying expenses (including the payment of sums due by them to meet the expenses of other authorities) pending the receipt of revenues receivable by them after 1st April 1996.

- (3) Grants made under this section shall be made out of money provided by Parliament.
- (4) In this section “local authority” means any of the local authorities the members of which are to be elected, in accordance with section 5 of this Act, on 6th April 1995.

### *Valuation and rating*

## **26 Valuation lists.**

- (1) Subject to the provisions of this section, the local assessor for each new local authority area shall compile for the council for that area, from the existing valuation lists, a valuation list as at 1st April 1996.
- (2) The provisions of section 84 of the 1992 Act (compilation and maintenance of valuation lists) shall apply, with any necessary modifications, to a valuation list compiled under subsection (1) above as they apply to a valuation list compiled under that section.
- (3) As soon as reasonably practicable after compiling a valuation list under subsection (1) above, the local assessor shall send a copy of the list to the council for whose area the list was compiled; and the council shall, as soon as reasonably practicable, deposit it at their principal office.
- (4) Subsection (1) above does not apply to the local assessors for the councils of the Borders, Dumfries and Galloway, Fife, Highland, Orkney Islands, Shetland Islands or Western Isles.
- (5) In this section—

“existing valuation lists” means the lists maintained under the said section 84 of the 1992 Act on the day on which this section comes into force in relation to the area of any regional council whose area includes any part of the area of the new authority; and

“valuation list” has the same meaning as in the 1992 Act.
- (6) A local assessor shall compile a list under this section by extrapolating from the existing valuation lists and, accordingly, except to the extent that valuation may be required to be carried out under any provision of the 1992 Act, shall not carry out any valuation of property for the purposes of a list compiled under this section.

## **27 Valuation areas and authorities and appointment of assessors etc.**

- (1) Each local authority area shall be a valuation area, and the council of each area shall be the valuation authority for that area; and on and after 1st April 1996 the valuation authorities constituted under this section shall have and exercise in relation to valuation the powers exercisable by valuation authorities immediately prior to that date.
- (2) Every valuation authority shall, in accordance with the provisions of this section, appoint an assessor and such number of depute assessors as the authority may consider

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necessary for the purposes of the Valuation Acts; and any assessor or depute assessor appointed under the 1973 Act by a regional or islands council and holding office immediately before 1st April 1996 shall cease to hold office on that date.

- (3) The Secretary of State shall by order prescribe the qualifications required to be possessed by any person appointed to the office of assessor or depute assessor and, except as otherwise provided in such an order, a person shall not be appointed as assessor or depute assessor unless he possesses the qualifications so prescribed.
- (4) A depute assessor appointed under this section shall have and may exercise all the functions of an assessor so appointed.
- (5) An assessor or depute assessor appointed under this section shall hold office on such reasonable terms and conditions, including conditions as to remuneration, as the authority appointing him think fit.
- (6) An assessor or depute assessor appointed under this section shall hold office during the pleasure of the valuation authority but shall not be removed from office (or required to resign as an alternative thereto) except—

- (a) by a resolution of the authority passed by not less than two-thirds of the members present at a meeting of the authority the notice of which specifies as an item of business the consideration of the removal from office of the assessor or his being required to resign; and
- (b) with the consent of the Secretary of State,

and before deciding whether or not to give such consent the Secretary of State shall give the authority and the assessor an opportunity of being heard by a person appointed by the Secretary of State.

[<sup>F11</sup>(6A) The Scottish Ministers may, if lands and heritages specified in an order made under section 6A(1)(aa) of the Valuation and Rating (Scotland) Act 1956 (c. 60) (power of Scottish Ministers to combine lands and heritages) are situated in more than one valuation area, provide, by order, that an assessor appointed by a valuation authority is to—

- (a) value those lands and heritages; and
- (b) if the order under that section of that Act so requires, apportion their rateable value in the manner set out in the order.

(6B) An order under subsection (6A) above may include such incidental, consequential and supplemental provision as the Scottish Ministers consider necessary or expedient for bringing the order into operation and for giving full effect thereto.

(6C) Without prejudice to the generality of subsections (6A) and (6B) above, an order under subsection (6A) above may provide—

- (a) that the assessor to whom the order relates is, for the purposes of giving effect to the order, to have such powers in relation to each valuation area in which there is situated lands and heritages to be valued in pursuance of the order as he has in relation to the area of the valuation authority which appointed him; and
- (b) that a valuation appeal committee constituted in relation to the area of the local authority which appointed the assessor may hear and determine appeals and complaints under the Valuation Acts in relation to the assessment of the lands and heritages to be valued in pursuance of the order.



*Status: Point in time view as at 01/04/2003.*

*Changes to legislation: There are currently no known outstanding effects for the Local Government etc. (Scotland) Act 1994, Part 1. (See end of Document for details)*

- (6D) Before making an order under subsection (6A) above, the Scottish Ministers shall consult such associations of local authorities and such other persons as they think appropriate.]
- (7) If it appears to the Secretary of State that any functions, or any functions in any area, of two or more valuation authorities should be discharged jointly by those authorities, he may by order establish a joint board in accordance with this section.
- (8) An order under [F12 subsection (7) above] shall delegate to the joint board such of the functions of the valuation authorities concerned under the Valuation Acts as may be specified in the order and may include such incidental, consequential and supplemental provision as the Secretary of State considers necessary or expedient for bringing the order into operation and for giving full effect thereto.
- (9) Without prejudice to the generality of subsection (8) above, an order under [F13 subsection (7) above] may include provision with respect to—
- (a) the constitution and proceedings of the joint board;
  - (b) matters relating to the membership of the joint board;
  - (c) the transfer to the joint board of any property, rights and liabilities of the authorities concerned;
  - (d) the transfer to the joint board of any staff of the authorities concerned;
  - (e) the supply of services or facilities by the authorities concerned to the joint board; and
  - (f) the dissolution of the joint board,
- and may, without prejudice to the generality of paragraphs (a) to (f) above, apply (with or without modifications) any of the provisions of Part V of the 1973 Act to a joint board established under [F14 subsection (7) above] as those provisions apply to a joint committee.
- (10) A joint board established under [F15 subsection (7) above] shall be a body corporate and shall have a common seal.
- (11) An order under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (12) Any reference in any enactment to a valuation authority shall, where any function to which that enactment relates is for the time being exercised by a joint board established under this section, include any such joint board.

#### Textual Amendments

- F11** S. 27(6A)-(6D) inserted (1.4.2003) by Local Government in [Scotland Act 2003 \(asp 1\)](#), **ss. 32(2)(a)**, 62(2); S.S.I. 2003/134, **art. 2(1)**, Sch.
- F12** Words in s. 27(8) substituted (1.4.2003) by Local Government in [Scotland Act 2003 \(asp 1\)](#), **ss. 32(2)(b)**, 62(2); S.S.I. 2003/134, **art. 2(1)**, Sch.
- F13** Words in s. 27(9) substituted (1.4.2003) by Local Government in [Scotland Act 2003 \(asp 1\)](#), **ss. 32(2)(b)**, 62(2); S.S.I. 2003/134, **art. 2(1)**, Sch.
- F14** Words in s. 27(9) substituted (1.4.2003) by Local Government in [Scotland Act 2003 \(asp 1\)](#), **ss. 32(2)(b)**, 62(2); S.S.I. 2003/134, **art. 2(1)**, Sch.
- F15** Words in s. 27(10) substituted (1.4.2003) by Local Government in [Scotland Act 2003 \(asp 1\)](#), **ss. 32(2)(b)**, 62(2); S.S.I. 2003/134, **art. 2(1)**, Sch.

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## **28 Valuation rolls.**

- (1) Subject to the provisions of this section, the assessor for each valuation area shall make up for the valuation authority for that area, from the existing valuation rolls, a valuation roll as at 1st April 1996.
- (2) Subsection (1) above does not apply to the assessors for the councils of the Borders, Dumfries and Galloway, Fife, Highland, Orkney Islands, Shetland Islands or Western Isles.
- (3) In this section “existing valuation rolls” means the rolls made up under subsection (1) of section 1 of the 1975 Act (valuation roll and revaluation) and in force by virtue of subsection (2) of that section on the day on which this section comes into force in relation to the area of any existing valuation authority whose area includes any part of the area of the new valuation authority.
- (4) Valuation rolls made up under this section shall be made up in the form prescribed for the purposes of section 1 of the 1975 Act; and subsections (4) and (5) of that section shall apply to such rolls as they apply to valuation rolls made up under subsection (1) of that section.
- (5) An assessor shall make up a valuation roll under this section by extrapolating from the existing valuation rolls, and accordingly, except to the extent that alteration of the valuation roll may be required to be carried out under section 2 of the 1975 Act (alteration to valuation roll in force), shall not make any alteration of the entries in the roll for the purposes of a roll made up under this section.

## **29 Valuation appeal panels and committees.**

- (1) With effect from 1st April 1996—
  - (a) valuation appeal panels and valuation appeal committees shall be constituted for each valuation area, in accordance with the provisions of this section and with regulations made by the Secretary of State, for the purpose of hearing and determining appeals and complaints—
    - (i) under the Valuation Acts; and
    - (ii) under sections 81(1) and 87(6) of the 1992 Act (council tax appeals);and
  - (b) every local valuation panel and valuation appeal committee constituted under section 4 of the 1975 Act shall cease to exist, and that section shall cease to have effect.
- (2) A valuation appeal committee shall consist of members of a valuation appeal panel, and members of such a panel shall be appointed by the sheriff principal after such consultation as he thinks fit.
- (3) Regulations under this section may make provision—
  - (a) for one valuation appeal panel to be appointed to serve two or more valuation areas;
  - (b) as to—
    - (i) the qualifications of members of a valuation appeal panel, and of any secretary or assistant secretary to be appointed to such a panel;
    - (ii) the maximum and minimum number of members of any such panel;and

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- (iii) the termination of the appointment of such members;
    - (c) with respect to the appointment of—
      - (i) one of those members as chairman of the panel;
      - (ii) such number of deputy chairmen as the sheriff principal considers appropriate; and
      - (iii) a secretary and, if the sheriff principal considers it necessary, an assistant secretary or assistant secretaries of the panel;
    - (d) as to—
      - (i) the number of valuation appeal committees to be formed from a valuation appeal panel;
      - (ii) the maximum and minimum number of members of such a committee; and
      - (iii) the manner in which members of a valuation appeal committee are to be selected from a valuation appeal panel;
    - (e) as to the terms and conditions of employment (including remuneration and allowances) of any secretary or assistant secretary of a valuation appeal panel;
    - (f) as to the payment to members of a valuation appeal panel and a valuation appeal committee of such allowances as the Secretary of State may determine;
    - (g) as to the defraying of any expenses incurred by a valuation appeal panel or committee; and
    - (h) for any other matter which appears to the Secretary of State to be necessary, expedient or appropriate for the purpose of the administration of valuation appeal panels and committees,
- and regulations under this section may make different provision in respect of different valuation appeal areas or different valuation panels.
- (4) All members of a valuation appeal panel shall reside or be engaged in business or be employed in the valuation area or areas for which the panel is responsible; and no person appointed as the secretary or an assistant secretary of a panel shall be an officer of a local authority or shall by himself or by any partner or assistant appear before a valuation appeal committee for that area.
  - (5) A valuation authority may pay reasonable subscriptions, whether annually or otherwise, to the funds of any association of members or officers of valuation appeal panels or valuation appeal committees formed for the purpose of consultation as to the common interests of those panels or committees and the discussion of matters relating to valuation.
  - (6) The provisions of the Valuation Acts with regard to appeals and complaints shall, with any necessary modifications, apply to a committee constituted under this section in like manner as they applied before 1st April 1996 to a committee constituted under the 1975 Act.
  - (7) Where the area served by a valuation appeal panel is situated in more than one sheriffdom, its members shall be appointed by the sheriff principal for such one of those sheriffdoms as the Secretary of State may direct.
  - (8) Regulations 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.

*Status: Point in time view as at 01/04/2003.*

*Changes to legislation: There are currently no known outstanding effects for the Local Government etc. (Scotland) Act 1994, Part I. (See end of Document for details)*

### 30 Rating authorities.

The rating authority for any local government area shall be the local authority for that area and, in this Act and in any other enactment (whether passed or made before or after the passing of this Act), the expression “rating authority” shall be construed in accordance with this section.

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

- C5** S. 30 applied (1.4.1996) by 1973 c. 65, s. 235(1) (as substituted (1.4.1996) by 1994 c. 39, s. 180(1), Sch. 13 para. 92(66)(d); S.I. 1996/323, art. 4(1)(b)(c))  
 S. 30 applied (1.4.1996) by 1992 c. 5, s. 191 (as substituted (1.4.1996) by 1994 c. 39, s. 180(1), Sch. 13 para. 175(5)(c); S.I. 1996/323, art. 4(1)(b)(c))

## CHAPTER 6

### FUNCTIONS

#### *Education*

### 31 Education.

For section 124 of the 1973 Act (education committees) there shall be substituted—

#### “124 Membership of committees appointed by education authorities.

- (1) Where an education authority appoint a committee whose purposes include—
  - (a) advising the authority on any matter relating to the discharge of their functions as education authority; or
  - (b) discharging any of those functions of the authority on their behalf,
 the members of such committee shall, notwithstanding the provisions of section 57(3) and (4)(a) of this Act, be appointed in accordance with this section.
- (2) Subject to the provisions of section 59 of this Act, an education authority who appoint a committee such as is mentioned in subsection (1) above shall secure that—
  - (a) at least half of the persons appointed by them to be members of such committee are members of the authority; and
  - (b) the persons appointed by them to be members of such committee shall include the three persons mentioned in subsection (4) below.
- (3) Subject to the provisions of subsection (2) above, an education authority may appoint persons who are not members of the authority to be members of a committee such as is mentioned in subsection (1) above.
- (4) The three persons mentioned in subsection (2)(b) above (who shall not be members of the education authority appointing such committee) are—
  - (a) one representative of the Church of Scotland, nominated in such manner as may be determined by the General Assembly of the Church;

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- (b) in the case of the education authority for each area other than Orkney Islands, Shetland Islands and Western Isles, one representative of the Roman Catholic Church, nominated in such manner as may be determined by the Scottish Hierarchy of the Church; and
  - (c) one person or, in the case of the education authorities for Orkney Islands, Shetland Islands and Western Isles, two persons, in the selection of whom the authority shall have regard (taking account of the representation of churches under paragraphs (a) and (b) above) to the comparative strength within their area of all the churches and denominational bodies having duly constituted charges or other regularly appointed places of worship there.
- (5) Where two or more authorities appoint a joint committee whose purposes include discharging any of the functions of those authorities as education authorities on their behalf, section 57(3) of this Act shall apply to such a joint committee as if for the words “two-thirds” there were substituted the words “one-half”.

## **32 Co-operation between education authorities.**

- (1) Section 23 of the <sup>M12</sup>Education (Scotland) Act 1980 (provision by education authority for education of pupils belonging to areas of other authorities) shall be amended in accordance with this section.
- (2) After subsection (1) there shall be inserted—
- “(1A) Without prejudice to any other provision of this Act, for the purposes of their duty under section 1 of this Act an education authority shall have power to make arrangements with another education authority (in this subsection referred to as a “provider authority”) for the provision of school education or further education for any pupils belonging to the area of the authority in a school or educational establishment under the management of the provider authority.
  - (1B) Arrangements made under this Act by an education authority for the placing of children in schools may include provision to give effect to any arrangements made under subsection (1A) above.
  - (1C) Where the arrangements for the placing of children in schools subsisting before the establishment of new local government areas under Part I of the Local Government etc. (Scotland) Act 1994 lead, as a consequence of such establishment, to school education for pupils belonging to the area of one education authority being provided at schools or educational establishments under the management of another education authority, nothing in this Act shall prevent such arrangements from continuing until they are changed by an education authority in accordance with this Act.”
- (3) After subsection (3) there shall be inserted—
- “(3A) Where an education authority’s arrangements for the placing of children in schools under their management give any priority to siblings of pupils attending such schools, those arrangements shall not discriminate between siblings belonging to the area of that education authority and siblings belonging to the area of another education authority.”

*Status: Point in time view as at 01/04/2003.*

*Changes to legislation: There are currently no known outstanding effects for the Local Government etc. (Scotland) Act 1994, Part I. (See end of Document for details)*

**Marginal Citations**

**M12** 1980 c. 44.

*Planning*

**F16**<sup>33</sup> .....

**Textual Amendments**

**F16** S. 33 repealed (27.5.1997) by 1997 c. 11, ss. 3, 6(2), **Sch. 1 Pt. I** (with s. 5, Sch. 3)

*Police*

**34 Reorganisation of police areas.**

After section 21 of the <sup>M13</sup>Police (Scotland) Act 1967 there shall be inserted the following section—

**“21B Reorganisation of police areas.**

- (1) Subject to the provisions of this section, the police forces established and maintained for existing police areas in Scotland under this Act immediately prior to 1st April 1996 shall continue in existence on and after that date in accordance with the provisions of this section.
- (2) The police forces for the existing police areas of Fife and Dumfries and Galloway shall be the police forces for the new police areas of the same names.
- (3) The Secretary of State shall, before 1st April 1996, by order make amalgamation schemes amalgamating the police areas mentioned in the second column of the table below into the combined police areas mentioned in the first column of that table, and the police forces for the existing police areas shown in brackets in the first column shall be the police forces for the new combined police areas.

TABLE

<i>Combined area</i>	<i>Police areas comprised</i>
Northern (Northern).	Highland, Western Isles, Orkney Islands, Shetland Islands.
Grampian (Grampian).	Aberdeenshire, Moray, City of Aberdeen.
Tayside (Tayside).	Perthshire and Kinross, Angus, City of Dundee.
Central Scotland (Central Scotland).	Stirling, Clackmannan, Falkirk.

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*Changes to legislation: There are currently no known outstanding effects for the Local Government etc. (Scotland) Act 1994, Part 1. (See end of Document for details)*

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Lothian and Borders (Lothian and Borders).	City of Edinburgh, East Lothian, Midlothian, West Lothian, the Borders.
Strathclyde (Strathclyde).	Argyll and Bute, Dumbarton and Clydebank, City of Glasgow, East Dunbartonshire, Inverclyde, North Lanarkshire, South Lanarkshire, Renfrewshire, East Renfrewshire, East Ayrshire, North Ayrshire, South Ayrshire.

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- (4) Subject to section 19A of this Act, an amalgamation scheme made under this section may contain such provision as the Secretary of State considers necessary or appropriate for the purposes of the scheme including, without prejudice to the generality of the foregoing, any provision which is required to be made, or which may be made, in an amalgamation scheme made by virtue of section 19 of this Act.
- (5) Before making an amalgamation scheme under this section the Secretary of State shall—
- consult such police authorities as appear to him to be affected by the scheme; and
  - where any such authority submit objections to the scheme, inform that authority in writing whether he accepts the objections and, if he does not, why he does not.
- (6) The schemes made by an order under this section shall not take effect before 1st April 1996, except in relation to—
- the constitution of joint police boards; and
  - the carrying out by those boards of any functions necessary to bring the schemes into operation on that date.
- (7) An order under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.”.

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**Marginal Citations**

M13 1967 c. 77.

### 35 Amalgamation schemes.

For section 20 of the <sup>M14</sup>Police (Scotland) Act 1967 there shall be substituted the following section—

**“20 Power of Secretary of State to make amalgamation schemes.**

- (1) If it appears to the Secretary of State that it is expedient in the interests of efficiency to make an amalgamation scheme for any police areas, he may, in accordance with the provisions of this section, make such amalgamation schemes, containing such provisions, as he considers appropriate.
- (2) Without prejudice to the generality of subsection (1) above, but subject to section 19A of this Act, an amalgamation scheme under this section may provide—

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*Changes to legislation: There are currently no known outstanding effects for the Local Government etc. (Scotland) Act 1994, Part I. (See end of Document for details)*

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- (a) for the amalgamation of any two or more police areas into a combined area;
  - (b) for the alteration of an existing combined area by the addition to or deletion from it of any police area;
  - (c) for the establishment or re-establishment and maintenance of police forces for any police area or combined area resulting from the scheme;
  - (d) for the dissolution and winding up of any joint police board constituted under a pre-existing amalgamation scheme, or for the reconstitution of any such board;
  - (e) for the transfer or retransfer to such police forces as may be determined by the scheme of constables affected by the scheme;
  - (f) for the transfer or retransfer to such authorities as may be determined by the scheme of any officers, property, rights or liabilities affected by the scheme;
  - (g) for the doing of anything which is required to be done, or which may be done, in an amalgamation scheme made under section 19 of this Act; and
  - (h) for any other matters incidental to or consequential on the provisions of the scheme.
- (3) Before making a scheme under this section which contains provision such as is mentioned in subsection (2)(a) or (b) above the Secretary of State shall—
- (a) consult such police authorities as appear to him to be affected by the scheme; and
  - (b) where any such authority submit objections to the scheme, inform that authority in writing whether he accepts the objections and, if he does not, why he does not.
- (4) A scheme under this section shall be contained in an order made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.”.

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**Marginal Citations**

**M14** 1967 c. 77.

*Fire services*

**36 Fire services.**

For section 147 of the 1973 Act (fire services) there shall be substituted—

**“147 Fire services.**

- (1) Subject to the provisions of this section, the fire brigades maintained in Scotland for the purposes of the Fire Services Acts 1947 to 1959 by fire authorities or, where administration schemes have been made, joint committees for combined areas immediately before 1st April 1996 shall continue in existence on and after that date.



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*Changes to legislation: There are currently no known outstanding effects for the Local Government etc. (Scotland) Act 1994, Part 1. (See end of Document for details)*

- (2) Subject to the provisions of the <sup>M15</sup>Fire Services Act 1947, the fire authority for the purposes of the Fire Services Acts 1947 to 1959 shall, until 31st March 1996, continue to be a regional or islands council and thereafter shall be a local authority.
- (3) The fire brigades for the existing fire authorities of Fife and Dumfries and Galloway shall be the fire brigades for the new fire authorities of the same names.
- (4) The Secretary of State shall, before 1st April 1996, by order make schemes (hereafter referred to as “administration schemes”) for the local government areas comprised in each of the combined areas set out in the Table at the end of this subsection for the provision in the combined area of the services required by section 1 of the Fire Services Act 1947; and the fire brigades for the existing areas shown in brackets in the first column shall be the fire brigades for the new combined areas.

*TABLE*

<i>Combined area</i>	<i>Local government areas comprised</i>
Central (Central Region).	Clackmannan, Falkirk, Stirling.
North Eastern (Grampian Region).	Aberdeenshire, City of Aberdeen, Moray.
Northern (Northern).	Highland, Orkney Islands, Shetland Islands, Western Isles.
South Eastern (South Eastern).	East Lothian, Midlothian, West Lothian, the Borders, City of Edinburgh.
Mid and South Western (Strathclyde Region).	Argyll and Bute, City of Glasgow, Dumbarton and Clydebank, East Dunbartonshire, Inverclyde, East Renfrewshire, East Ayrshire, North Ayrshire, South Ayrshire, North Lanarkshire, South Lanarkshire, Renfrewshire.
Mid Eastern (Tayside Region).	Angus, City of Dundee, Perthshire and Kinross.

- (5) Subject to subsection (6) below, an administration scheme made under this section may contain such provision as the Secretary of State considers necessary or appropriate for the purposes of the scheme including, without prejudice to the generality of the foregoing, any provision which is required to be made, or which may be made, in an administration scheme under section 36 of the Fire Services Act 1947.
- (6) An administration scheme made under this section shall provide for the incorporation of the joint board with a common seal and shall confer on such a board power to hold land and to borrow money.
- (7) Before making an administration scheme under this section the Secretary of State shall—

*Status: Point in time view as at 01/04/2003.*

*Changes to legislation: There are currently no known outstanding effects for the Local Government etc. (Scotland) Act 1994, Part I. (See end of Document for details)*

- (a) consult such fire authorities as appear to him to be affected by the scheme; and
  - (b) where any such authority submit objections to the scheme, inform that authority in writing whether he accepts the objections and, if he does not, why he does not.
- (8) An administration scheme made under this section shall not take effect before 1st April 1996, except so far as it relates to—
- (a) the constitution of the joint board for fire services; and
  - (b) the performance by that board of functions necessary for bringing the scheme into full operation on that date.
- (9) A statutory instrument containing an order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.”.

#### Marginal Citations

M15 1947 c. 41.

#### Rivers

<sup>F17</sup>37 .....

#### Textual Amendments

F17 S. 37 repealed (1.2.1996) by 1995 c. 25, s. 120(3), Sch. 24 (with ss. 7(6), 115, 117); S.I. 1996/186, art. 2

#### Roads

### 38 Roads.

- (1) The <sup>M16</sup>Roads (Scotland) Act 1984 shall be amended in accordance with this section.
- (2) After section 12 there shall be inserted the following sections—

#### “ Transitory provisions

##### 12A Transitional power of Secretary of State as respects existing roads.

- (1) Without prejudice to section 5 of this Act, where the Secretary of State considers that it is necessary or expedient as a result of, or in connection with, the establishment of new local government areas on 1st April 1996—
  - (a) that any existing road should become a trunk road; or
  - (b) that any trunk road should cease to be a trunk road,
 he may by order direct that the road shall become a trunk road or, as the case may be, shall cease to be a trunk road, as from such date as may be specified in that regard in the order.

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- (2) Where an order under this section directs that a road shall cease to be a trunk road, it may also direct that—
- (a) as from the date specified in that regard in the order, the local roads authority for the area shall become the roads authority for the road; and
  - (b) the authority shall enter the road in their list of public roads.
- (3) An order under this section may relate to one or more roads.

### **12B Transitional power of Secretary of State as respects proposed roads.**

- (1) Without prejudice to section 5 of this Act, where the Secretary of State considers that it is necessary or expedient as a result of, or in connection with, the establishment of new local government areas on 1st April 1996—
- (a) that any proposed road—
    - (i) to be constructed by the local roads authority; and
    - (ii) in respect of which all necessary planning permission has been granted or is deemed to have been granted,should become a trunk road; or
  - (b) that any proposed road—
    - (i) to be constructed by the Secretary of State as a trunk road; and
    - (ii) in relation to which an order has been made under section 5 of this Act,should not become a trunk road,
- he may by order direct that the proposed road shall or, as the case may be, shall not become a trunk road.
- (2) Where an order is made in respect of a proposed road as mentioned in subsection (1)(a) above—
- (a) subject to subsection (6) below, the Secretary of State may, for the purposes of the construction of that road, do any thing which he would have been entitled to do if an order under section 12 of this Act (in this section referred to as a “section 12 order”) had been made in relation to that road; and
  - (b) where an environmental statement has been published in respect of the project, the Secretary of State shall not be required to publish a further environmental statement,
- but otherwise the Secretary of State shall in all respects be in the same position in relation to that proposed road as the local roads authority would have been if such order had not been made.
- (3) Where an order is made in respect of a proposed road as mentioned in subsection (1)(b) above—
- (a) the local roads authority may proceed with construction of the said road as if all necessary planning permission had been granted;
  - (b) the section 12 order made in relation to that road shall apply as if—
    - (i) the local roads authority were the roads authority referred to in such order; and
    - (ii) all necessary planning permission has been granted; and

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- (c) where an environmental statement has been published in respect of the project, the local roads authority shall not be required to publish a further environmental statement.
- (4) Where an order under this section directs that a proposed road shall not become a trunk road, it may also direct that—
- (a) as from the date specified in that regard in the order, the local roads authority for the area shall become the roads authority for the proposed road; and
  - (b) on such date as may be specified in that regard in the order, the authority shall enter the road in their list of public roads.
- (5) An order under this section may relate to one or more proposed roads.
- (6) The Secretary of State shall not by virtue of this section be empowered—
- (a) to stop up a road as mentioned in section 12(1)(a)(i) of this Act; or
  - (b) to do anything mentioned in paragraphs (a) and (b) of section 70 of this Act except where the local roads authority have been so authorised under a section 12 order; and where such an order has been made, the Secretary of State may do anything he would have been authorised to do if the order had been made by him.
- (7) In this section and in section 12C of this Act “planning permission” means permission under Part III of the <sup>M17</sup>Town and Country Planning (Scotland) Act 1972.

### **12C Transitional power of Secretary of State as respects special road schemes.**

- (1) Where the Secretary of State considers that it is necessary or expedient as a result of, or in connection with, the establishment of new local government areas on 1st April 1996 that—
- (a) a special road which the Secretary of State is authorised to provide by virtue of a scheme under section 7 of this Act (a “section 7 scheme”) should be provided by a local roads authority; or
  - (b) a special road which a local roads authority is authorised to provide by virtue of a section 7 scheme which has been confirmed by the Secretary of State should be provided by the Secretary of State,
- he may by order direct that the local roads authority or, as the case may be, the Secretary of State shall be authorised to provide such special road; and the section 7 schemes relating to those special roads shall (notwithstanding their terms) be deemed to authorise the provision of such special roads by the local roads authority and the Secretary of State respectively.
- (2) Where an order is made in respect of a special road as mentioned in subsection (1)(a) above—
- (a) where the Secretary of State has made an order under section 9 of this Act (a “section 9 order”) in relation to that special road, the local roads authority may treat that order as if it were an order made by them and confirmed by the Secretary of State;
  - (b) any necessary planning permission (whether relating to the special road or the doing of anything authorised by virtue of the section 9

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*Status: Point in time view as at 01/04/2003.*

*Changes to legislation: There are currently no known outstanding effects for the Local Government etc. (Scotland) Act 1994, Part 1. (See end of Document for details)*

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- order) shall be deemed to have been granted to the local roads authority; and
- (c) where an environmental statement has been published in respect of the project, the local roads authority shall not be required to publish a further environmental statement.
- (3) Where an order is made in respect of a special road as mentioned in subsection (1)(b) above—
- (a) if the local roads authority have made a section 9 order which has been confirmed by the Secretary of State, the Secretary of State may treat that section 9 order as if it were an order made by him; and
- (b) where an environmental statement has been published in respect of the project, the Secretary of State shall not be required to publish a further environmental statement,

but otherwise the Secretary of State shall in all respects be in the same position in relation to that special road as the local roads authority would have been if such order had not been made.

#### **12D Application of section 112 to orders under sections 12A, 12B, 12C and 12E.**

The provisions of section 112 of this Act shall apply, subject to such modifications as the Secretary of State may by order specify, to roads, proposed roads and special roads such as may be mentioned in orders made under sections 12A, 12B, 12C and 12E of this Act as they apply to roads mentioned in the said section 112.

#### **12E Further power of Secretary of State as respects proposed roads and special road schemes.**

- (1) Where the Secretary of State considers that it is necessary or expedient as a result of, or in connection with, the establishment of new local government areas on 1st April 1996 that any proposed road to be constructed by a local roads authority should become a trunk road, but the condition mentioned in subsection (1)(a)(ii) of section 12B of this Act is not satisfied in relation to such proposed road, he may, notwithstanding the provisions of that subsection, by order direct that the proposed road shall become a trunk road.
- (2) The provisions of paragraphs (a) and (b) of section 12B(2) of this Act shall apply where an order is made under subsection (1) above as they apply where an order is made under subsection (1)(a) of that section.
- (3) Where the Secretary of State considers that it is necessary or expedient as a result of, or in connection with, the establishment of new local government areas on 1st April 1996 that a special road in respect of which a section 7 scheme has been made by a local roads authority but not confirmed by the Secretary of State should be provided by him, he may, notwithstanding the provisions of subsection (1)(b) of section 12C of this Act, by order, direct that he shall be authorised to provide such special road by virtue of such scheme.
- (4) The provisions of paragraphs (a) and (b) of section 12C(3) of this Act shall apply where an order is made under subsection (3) above as they apply where an order is made under subsection (1)(b) of that section.

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*Status: Point in time view as at 01/04/2003.*

*Changes to legislation: There are currently no known outstanding effects for the Local Government etc. (Scotland) Act 1994, Part I. (See end of Document for details)*

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- (5) An order under subsection (1) or (3) above may include provision specifying the extent to which compliance before the making of that order with any statutory requirement in relation to the proposed road or, as the case may be, special road shall be deemed to satisfy for all purposes any statutory requirement which the Secretary of State would, apart from such provision, have been required to comply with in relation to that proposed road or special road.
- (6) As from the date of an order under subsection (1) or (3) above, the proposed road or, as the case may be, special road shall be deemed always to have been a proposed road to be constructed by the Secretary of State or a special road which the Secretary of State is authorised to provide.

### **12F Further provisions as to orders.**

An order under section 12A, 12B, 12C, 12D or 12E of this Act may not be made so as to take effect more than 3 years after 1st April 1996.”.

- (3) In section 112 (transfer of property and liabilities on road becoming or ceasing to be a trunk road)—
- (a) in subsection (1), after paragraph (c) there shall be inserted the following paragraph—
- “*(d) any property such as is mentioned in subsection (1A) below*”;
- (b) after subsection (1) there shall be inserted the following subsections—
- “*(1A) The property mentioned in paragraph (d) of subsection (1) above is property which—*
- (a) was, immediately before the operative date, vested in the former roads authority for the purposes of their functions in relation to more than one road (including the road mentioned in that subsection); and
- (b) is specified in an order made by the Secretary of State.
- (1B) Where any property is transferred to and vests in the Secretary of State as mentioned in subsection (1)(d) above, he shall make arrangements with the former roads authority as respects the use of that property; and any dispute between the Secretary of State and the former roads authority as to any arrangements made under this subsection shall be determined in like manner as any dispute such as is mentioned in subsection (7) below.*”;
- (c) in subsection (2), for the words “subsection (1)” there shall be substituted the words “subsections (1) and (1A) ”.
- (4) In section 143(2)(a)(ii) (orders subject to negative resolution), after “section 8” there shall be inserted “, 12A, 12B, 12C, 12D, 12E ”.

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#### **Marginal Citations**

**M16** 1984 c. 54.

**M17** 1972 c. 52.

*Status: Point in time view as at 01/04/2003.*

*Changes to legislation: There are currently no known outstanding effects for the Local Government etc. (Scotland) Act 1994, Part 1. (See end of Document for details)*

### **39 Roads authority for boundary bridges.**

After section 81 of the <sup>M18</sup>Roads (Scotland) Act 1984 there shall be inserted—

#### **“81A Roads authority for boundary bridges.**

- (1) This section applies where a public road is carried by a bridge over a waterway and the bridge lies partly in the areas of two local roads authorities.
- (2) Where this section applies, the authorities concerned may make arrangements as to—
  - (a) which of them shall be the roads authority in relation to that bridge;
  - (b) the performance by such roads authority in relation to the bridge of any of the roads functions of the other authority; and
  - (c) the making of contributions by that other authority to the roads authority in respect of expenditure incurred in the performance of those functions.
- (3) Where arrangements are not made as mentioned in subsection (2) above, the Secretary of State may, on the application of one of the roads authorities concerned, make a determination in respect of the matters mentioned in paragraphs (a) to (c) of that subsection.
- (4) A determination of the Secretary of State under subsection (3) above shall be binding.”.

#### **Marginal Citations**

**M18** 1984 c. 54.

### *Public transport*

### **40 Establishment etc. of Strathclyde Passenger Transport Authority.**

- (1) With effect from 1st April 1996 there shall be a Passenger Transport Authority to be known as the Strathclyde Passenger Transport Authority (in this section referred to as “the Authority”) for the Strathclyde Passenger Transport Area for the purposes of Part II of the <sup>M19</sup>Transport Act 1968.
- (2) On 1st April 1996 all of the functions, staff, property, rights, liabilities and obligations of Strathclyde Regional Council as Passenger Transport Authority shall be transferred to and vest in the Authority.
- (3) Section 9 of this Act shall apply to any person transferred to the Authority under this section as if any reference in that section to a new authority included a reference to the Authority.
- (4) The Secretary of State may by order—
  - (a) designate the passenger transport area of the Authority; and
  - (b) make provision for the constitution and membership of the Authority in accordance with the provisions of Schedule 5 to this Act.

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*Status: Point in time view as at 01/04/2003.*

*Changes to legislation: There are currently no known outstanding effects for the Local Government etc. (Scotland) Act 1994, Part I. (See end of Document for details)*

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- (5) Without prejudice to the provisions of the said Schedule 5, an order under subsection (4) above shall include—
- (a) such provision with respect to any of the matters referred to in that Schedule; and
  - (b) such supplementary, incidental and consequential provision, as the Secretary of State considers necessary or expedient.
- (6) Before making an order under subsection (4) above the Secretary of State shall consult such persons or bodies as he thinks fit.
- (7) The following provisions of the 1973 Act shall apply, subject to any necessary modifications, with respect to the Authority as they apply with respect to a local authority or, in the case of section 106(2), a body, that is to say—
- (a) section 95 (financial administration);
  - (b) section 96 (accounts and audit);
  - (c) section 97 (Commission for Local Authority Accounts in Scotland);
  - (d) section 97A (studies for improving economy etc. in services);
  - (e) section 97B (furnishing of information and documents to Commission);
  - (f) section 98 (expenses and accounts of Commission);
  - (g) section 99 (general duties of auditors);
  - (h) section 100 (auditor's right of access to documents);
  - (i) section 101 (right of interested person to inspect and object to accounts: completion of audit);
  - (j) section 102 (reports to Commission by Controller of Audit);
  - (k) section 103 (action by Commission on reports by Controller of Audit);
  - (l) section 104 (action by Secretary of State on recommendation by Commission under section 103(3));
  - (m) section 105 (regulations as to accounts); and
  - (n) section 106(2) (accounts of officer to be audited in certain circumstances).
- (8) The Secretary of State may by order vary the passenger transport area of the Authority.
- (9) An order under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (10) Schedule 5 to this Act (which makes provision for the constitution, proceedings etc. of the Authority) shall have effect.

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**Marginal Citations**

**M19** 1968 c. 73.

**41 Amendment of section 13 of Transport Act 1968.**

For section 13 of the Transport Act 1968 (grants to the Executive) there shall be substituted—



*Status: Point in time view as at 01/04/2003.*

*Changes to legislation: There are currently no known outstanding effects for the Local Government etc. (Scotland) Act 1994, Part 1. (See end of Document for details)*

### “13 Grants and payments.

- (1) Any expenditure of the Strathclyde Passenger Transport Authority shall, in so far as not otherwise met, be met by the local authorities whose areas lie wholly or partly within the area of the Authority in such proportions as the <sup>M20</sup>authorities may agree.
- (2) Where—
  - (a) the authorities mentioned in subsection (1) above cannot reach agreement as to the proportions in which the expenditure of the Authority shall be met by them and the Authority make an application to the Secretary of State for resolution of the matter; or
  - (b) it appears to the Secretary of State that those authorities are unable to reach such agreement,the Secretary of State shall determine the proportions in which such expenditure shall be met by those authorities.
- (3) The Authority shall have power to make grants to the Executive for any purpose.”.

#### Marginal Citations

M20 1968 c. 73.

### *Traffic*

#### 42 Power to secure management of traffic control system.

- (1) Where the Secretary of State considers that—
  - (a) for the purposes of securing the expeditious, convenient and safe movement of vehicular and other traffic (including pedestrians), a system of traffic control should extend across the roads of two or more traffic authorities; and
  - (b) the authorities for those roads have not made satisfactory joint arrangements for the exercise of such of their functions under the <sup>M21</sup>Road Traffic Regulation Act 1984 as are necessary to secure the provision and management of such a system of traffic control,he may make an order under this section.
- (2) An order under this section may transfer to the Secretary of State such functions of those authorities under that Act as he considers necessary to enable him to secure the provision and management of such a system.
- (3) The Secretary of State may enter into arrangements with such an authority for the carrying out by that authority on his behalf of the functions mentioned in subsection (2) above.
- (4) Any expenses reasonably incurred by the Secretary of State in exercising the functions transferred by an order under this section may be recovered by him from the traffic authorities from which the functions were transferred in such proportions—
  - (a) as may be agreed between the authorities; or

*Status: Point in time view as at 01/04/2003.*

*Changes to legislation: There are currently no known outstanding effects for the Local Government etc. (Scotland) Act 1994, Part I. (See end of Document for details)*

(b) where there is no agreement, as may be determined by him.

(5) In this section—

“road” has the same meaning as in the <sup>M22</sup>Roads (Scotland) Act 1984; and  
 “traffic authority” has the meaning given by section 121A of the Road Traffic Regulation Act 1984.

#### Marginal Citations

M21 1984 c. 27.

M22 1984 c. 54.

### 43 Guidance as to exercise of traffic powers.

(1) For the purpose of ensuring that the exercise by an authority of any of the powers mentioned in subsections (2) and (3) below does not have an adverse effect on the expeditious, convenient and safe movement of vehicular and other traffic (including pedestrians)—

- (a) on the roads of any other authority; or
- (b) on the national system of routes for through traffic in Scotland,

the Secretary of State may issue guidance to an authority as to the exercise of those powers.

(2) The powers referred to in subsection (1) above are the powers of an authority to make, vary or revoke orders under or by virtue of any of the following sections of the Road Traffic Regulation Act 1984, that is to say—

- (a) section 1 (traffic regulation orders);
- (b) section 9 (experimental traffic orders);
- (c) section 19 (orders concerning public service vehicles);
- (d) section 32 (provision of parking places by authorities);
- (e) section 35 (orders as to use of parking places);
- (f) section 37 (orders relating to general scheme of traffic control);
- (g) section 38 (orders as to use of parking places as bus or coach stations);
- (h) section 45 (orders designating paying parking places);
- (i) section 46 (further orders regulating paying parking places);
- (j) section 49 (designation orders and designated parking places);
- (k) section 53 (designation orders);
- (l) section 82(2) (directions concerning restricted roads); and
- (m) section 84 (speed limits on certain roads).

(3) The powers referred to in subsection (1) above are the powers of an authority under sections 36 (construction of road humps) and 39A (construction of traffic calming works) of the <sup>M23</sup>Roads (Scotland) Act 1984.

(4) Before issuing guidance under this section the Secretary of State shall consult the Common Services Agency for the Scottish Health Service in respect of the provision by them of an ambulance service by virtue of the National Health Service (Functions of the <sup>M24</sup>Common Services Agency) (Scotland) Order 1974 and—

- (a) the chief constables of the police forces maintained;
- (b) the fire authorities (within the meaning of the <sup>M25</sup>Fire Services Act 1947); and

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- (c) the authorities,  
for the areas to which the guidance relates.
- (5) Without prejudice to his power to make regulations under paragraph 21 of Schedule 9 to the <sup>M26</sup>Road Traffic Regulation Act 1984 or, as the case may be, section 39B(1) of the Roads (Scotland) Act 1984, the Secretary of State may by regulations make provision as to the procedures to be followed by authorities in relation to the guidance.
- (6) An authority shall, before exercising any power mentioned in subsections (2) and (3) above, and subject to any regulations made under subsection (5) above—
- (a) have regard to any guidance issued to them under this section;
  - (b) consider whether the proposed exercise of such power would be likely to have an effect on the expeditious, convenient and safe movement of vehicular and other traffic (including pedestrians)—
    - (i) on a road in the area of any other authority; or
    - (ii) on a road in the national system of routes for through traffic in Scotland; and
  - (c) if the proposed exercise would, in their opinion, have such an effect, consult—
    - (i) in the case of a road such as is mentioned in paragraph (b)(i) of this subsection, the other authority; or
    - (ii) in the case of a road such as is mentioned in paragraph (b)(ii) of this subsection, the Secretary of State.
- (7) Where an authority take any action which, in the opinion of the Secretary of State—
- (a) is contrary to any guidance issued to the authority under this section; and
  - (b) has or is likely to have an adverse effect on either of the matters referred to in paragraphs (a) and (b) of subsection (1) above,
- the Secretary of State may, after consulting the authority, direct the authority to take such steps within a period specified by him as may be necessary to conform with that guidance.
- (8) If, in the opinion of the Secretary of State, an authority have failed to comply with a direction under subsection (7) above, he may exercise any of their powers for the purpose of giving effect to the direction; and any expenses reasonably incurred by him in doing so shall be recoverable by him from that authority.
- (9) The power to make regulations under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (10) In this section—
- “authority” means—
    - (a) in relation to the exercise of the powers mentioned in subsection (2) above, a traffic authority (within the meaning of the <sup>M27</sup>Road Traffic Regulation Act 1984); and
    - (b) in relation to the exercise of the powers mentioned in subsection (3) above, a roads authority (within the meaning of the <sup>M28</sup>Roads (Scotland) Act 1984); and
  - “road” has the same meaning as in the Roads (Scotland) Act 1984.

*Status: Point in time view as at 01/04/2003.*

*Changes to legislation: There are currently no known outstanding effects for the Local Government etc. (Scotland) Act 1994, Part I. (See end of Document for details)*

#### Marginal Citations

**M23** 1984 c. 54.

**M24** S.I. 1974/467.

**M25** 1947 c. 41.

**M26** 1984 c. 27.

**M27** 1984 c. 27.

**M28** 1984 c. 54.

#### 44 Restriction on order-making powers of existing authorities.

- (1) Where a regional council propose to make an order such as is mentioned in subsection (2) below and the order—
- (a) will come into effect after such date as the Secretary of State may by order made by statutory instrument prescribe; and
  - (b) will continue in effect after 31st March 1996,
- they shall, before making the order, seek the consent of the successor authority.
- (2) The orders referred to in subsection (1) above are any orders made under the following provisions of the <sup>M29</sup>Road Traffic Regulation Act 1984—
- (a) section 1 (traffic regulation orders);
  - (b) section 9 (experimental traffic orders);
  - (c) section 14 (temporary traffic orders);
  - (d) section 32 (provision of parking places by authorities);
  - (e) section 35 (orders relating to use of parking places);
  - (f) section 37 (orders as to general scheme of traffic control);
  - (g) section 45 (orders designating paying parking places);
  - (h) section 46 (further orders regulating paying parking places); and
  - (i) section 84 (speed limits on certain roads).
- (3) Where a successor authority refuse their consent to a proposed order to which this section applies the regional council shall not make the order without having obtained the consent of the Secretary of State.
- (4) Where—
- (a) a regional council have sought the consent of a successor authority to the making of a proposed order to which this section applies; and
  - (b) the successor authority have failed, within 6 weeks of such consent being sought, to consent,
- the successor authority shall be deemed to have given such consent.
- (5) In this section “successor authority” means any council constituted under section 2 of this Act (other than the councils for Orkney Islands, Shetland Islands and Western Isles) in whose area the proposed order will have effect.

#### Marginal Citations

**M29** 1984 c. 27.

*Status: Point in time view as at 01/04/2003.*

*Changes to legislation: There are currently no known outstanding effects for the Local Government etc. (Scotland) Act 1994, Part 1. (See end of Document for details)*

### *Social work*

#### **45 Chief social work officer.**

—For section 3 of the <sup>M30</sup>Social Work (Scotland) Act 1968 (director of social work), there shall be substituted the following section—

##### **“3 Chief social work officer.**

- (1) For the purposes of their functions under this Act and the enactments mentioned in section 5(1B) of this Act, a local authority shall appoint an officer to be known as the chief social work officer.
- (2) The qualifications of the chief social work officer shall be such as may be prescribed by the Secretary of State.”.

#### **Marginal Citations**

**M30** 1968 c. 49.

## **CHAPTER 7**

### **MISCELLANEOUS**

#### **46 Licensing boards.**

- (1) A council may determine whether their area shall be divided into licensing divisions for the purposes of the <sup>M31</sup>Licensing (Scotland) Act 1976.
- (2) Where a determination is made under this section, the council shall forthwith notify the Secretary of State of such determination and cause notice thereof to be published in two successive weeks in one or more newspapers circulating in the area.
- (3) Every council shall, by no later than 31st March 1996, elect the members of the licensing board for—
  - (a) their area; or
  - (b) where a determination has been made under this section, each licensing division of their area.
- (4) Any thing done by any licensing board for any area before 1st April 1996 shall, to the extent that it has effect before that date, have effect after that date as if it had been done by the licensing board for that area (or, as the case may be, the licensing board whose area falls wholly or partly within that area) on that date.
- (5) In this section “council” means a council constituted under section 2 of this Act.

#### **Marginal Citations**

**M31** 1976 c. 66.

*Status: Point in time view as at 01/04/2003.*

*Changes to legislation: There are currently no known outstanding effects for the Local Government etc. (Scotland) Act 1994, Part 1. (See end of Document for details)*

#### 47 Proceedings in district courts: transitional provisions.

Where proceedings were instituted before 1st April 1996 in any district court and those proceedings have not been completed by that date, then, for the purpose of enabling those proceedings to be continued on and after that date, and for preserving in other respects the continuity of the administration of justice—

- (a) the district court having jurisdiction on and after that date in the area where the proceedings were instituted shall be treated as succeeding to, and being the same court as, the district court in which the proceedings were instituted, and any verdict, sentence, order, complaint, notice, citation, warrant, or other proceedings or document shall have effect accordingly; and
- (b) the clerk of the district court in which the proceedings were instituted shall transfer all records, productions and documents relating to those proceedings to the clerk of the district court treated as succeeding to that court.

#### 48 Amendment of District Courts (Scotland) Act 1975.

In section 2 of the <sup>M32</sup>District Courts (Scotland) Act 1975 (district of, and exercise of jurisdiction by, district court), after subsection (1) there shall be inserted the following subsection—

“(1A) In determining where and when a district court should sit, a local authority shall have regard to the desirability of minimising the expense and inconvenience occasioned to those directly involved, whether as parties or witnesses, in the proceedings before the court.”.

##### Marginal Citations

M32 1975 c. 20.

#### 49 Justices of the peace.

- (1) Any person holding office as justice of the peace for any commission area by virtue of the provisions of section 9(2) or 10(3) of the <sup>M33</sup>District Courts (Scotland) Act 1975 immediately before 1st April 1996 shall, on and after that date, hold office as justice of the peace for the commission area in which he resides on that date.
- (2) Any person holding office as justice of the peace for any commission area on and after 1st April 1996 by virtue of the provisions of subsection (1) above shall hold that office as if appointed in accordance with the said section 9(2).
- (3) Where the Secretary of State is satisfied in all the circumstances that it is expedient that any such person as is mentioned in subsection (1) above should hold that office for another commission area, he may so direct; and any such direction shall have effect, and shall be treated for the purposes of the said Act of 1975, as an instrument appointing that person in accordance with the said section 9(2) to hold office for such commission area as is mentioned in the direction.

##### Marginal Citations

M33 1975 c. 20.

*Status: Point in time view as at 01/04/2003.*

*Changes to legislation: There are currently no known outstanding effects for the Local Government etc. (Scotland) Act 1994, Part 1. (See end of Document for details)*

## 50 Stipendiary magistrates.

- (1) Any person who holds office as stipendiary magistrate for any area immediately before 1st April 1996 shall, on that date, become a stipendiary magistrate in the district court having jurisdiction in that area and shall be deemed in all respects to have been appointed by virtue of section 5(1) of the District Courts (Scotland) Act 1975.
- (2) The provisions of sections 8, 9 and 10 of this Act shall apply, subject to any necessary modifications, to the transfer of stipendiary magistrates on 1st April 1996.

## 51 Registration of births, deaths and marriages.

- (1) The <sup>M34</sup>Registration of Births, Deaths and Marriages (Scotland) Act 1965 shall be amended in accordance with the provisions of this section.
- (2) For section 5(3) (registration districts and registration authorities) there shall be substituted the following subsection—
  - “(3) For each registration district there shall be a local registration authority which shall be the local authority in whose area the registration office or the principal premises of that office are, immediately before the commencement of section 51 of the Local Government etc. (Scotland) Act 1994, situated.”.
- (3) In section 8 (registration offices)—
  - (a) in subsection (1), after the words “registration office” there shall be inserted the words “ which may comprise principal premises and such subordinate premises as they may, with the approval of the Registrar General, consider appropriate ”; and
  - (b) at the end there shall be inserted the following subsection—
    - “(6) References in this Act to the registration office shall, unless the context otherwise requires, be construed as including all the premises provided and maintained by a local registration authority as parts of the registration office.”.
- (4) In section 15 (information concerning finding of infant children)—
  - (a) in subsections (1) and (3), for the words “director of social work” there shall be substituted “ chief social work officer ”; and
  - (b) subsection (4) shall cease to have effect.
- (5) In section 56(1) (interpretation), after the definition of “function” there shall be inserted the following definition—

““local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994;”.

### Commencement Information

- II** S. 51 wholly in force at 1.4.1996; s. 51 not in force at Royal Assent see s. 184(2); s. 51(3) in force at 4.1.1995 by S.I. 1994/2850, art. 3(a), **Sch. 2**; s. 51(1)(2)(4)(5) in force at 1.4.1996 by S.I. 1996/323, art. 4(1)(a), **Sch. 1**

### Marginal Citations

- M34** 1965 c. 49.

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*Status: Point in time view as at 01/04/2003.*

*Changes to legislation: There are currently no known outstanding effects for the Local Government etc. (Scotland) Act 1994, Part I. (See end of Document for details)*

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## 52 Tweed Fisheries Commissioners.

- (1) On 1st April 1996 each person holding office as representative commissioner appointed by any of the district councils of Berwickshire, Roxburgh, Ettrick and Lauderdale or Tweeddale under the <sup>M35</sup>Tweed Fisheries Act 1969 shall go out of office.
- (2) The function of appointing representatives formerly appointed by the councils mentioned in subsection (1) above shall be transferred to the new council for the Borders.
- (3) In Schedule 1 to the said Act of 1969, for the entries relating to the district councils of Berwickshire, Roxburgh, Ettrick and Lauderdale and Tweeddale there shall be substituted the entry relating to the Borders Council set out in Schedule 6 to this Act.

### Marginal Citations

M35 1969 c. xxiv.

## 53 Records held by local authorities.

- (1) A local authority shall, in accordance with the provisions of this section, make proper arrangements for the preservation and management of any records which have been—
  - (a) transferred to and vested in them by virtue of an order under section 15 of this Act;
  - (b) created or acquired by them in the exercise of any of their functions; or
  - (c) otherwise placed in their custody,
 and shall, before putting any such arrangements into effect, or making any material change to such arrangements, consult the Keeper of the Records of Scotland, and have regard to any comments which he may make on the proposed arrangements or changes.
- (2) A local authority may dispose of any records which they do not consider to be worthy of preservation.
- (3) Before entering into any arrangements to which section 58 of this Act or section 56 of the 1973 Act (arrangements for discharge of functions by local authorities) applies with regard to the preservation and management of any records, a local authority shall consult the Keeper.
- (4) Where a local authority hold records relating to the property or functions of any other local authority, that other authority shall, subject to any arrangements made under section 58 of this Act or section 56 of the 1973 Act by the two authorities—
  - (a) be entitled to free access to, and copies of, any such records; and
  - (b) pay to the local authority holding the records such proportion of the costs incurred by that authority in preserving and managing the records—
    - (i) as the authorities may agree; or
    - (ii) as may, failing such agreement, be determined by the Secretary of State.
- (5) The Keeper shall be entitled to free access to any records held by a local authority.
- (6) For the purposes of this section and section 54 of this Act “records” includes charters, deeds, minutes, accounts and other documents, and any other records, of whatever form and in whatever medium, which convey information, but does not include records



*Status: Point in time view as at 01/04/2003.*

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which are the property of the Registrar General of Births, Deaths and Marriages for Scotland.

#### 54 Use, acquisition and disposal of records.

- (1) A local authority may do anything which appears to them to be appropriate for the purpose of enabling proper use to be made of their records and, without prejudice to the generality of the foregoing, may—
  - (a) make provision for enabling persons, with or without charge and subject to such conditions as the authority may determine, to inspect the records and to make or obtain copies thereof;
  - (b) prepare, or procure or assist in the preparation of, indices and guides to and calendars and summaries of the records;
  - (c) publish, or procure or assist in the publication of, the records or any index or guide to or calendar or summary of the records;
  - (d) hold exhibitions of the records and arrange for the delivery of explanatory lectures, with or without charging for admission to such exhibitions or lectures;
  - (e) direct that the records be temporarily entrusted to other persons for exhibition or study.
- (2) Nothing in subsection (1) above shall be taken as authorising the doing of any act which infringes copyright or contravenes conditions subject to which records are under the control of an authority.
- (3) A local authority may—
  - (a) acquire by way of purchase records which, or (in the case of a collection) the majority of which, appear to the authority to be of general or local interest;
  - (b) accept the gift of records which or, in the case of a collection, the majority of which appear to the authority to be of general or local interest.
- (4) A local authority may accept the deposit of records—
  - (a) authorised to be deposited with it by any enactment; and
  - (b) which appear to the authority to be of general or local interest.

<sup>F18</sup>(5) .....

#### Textual Amendments

**F18** S. 54(5) repealed (1.2.1996) by 1995 c. 25, s.120(3), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 2**

#### Commencement Information

**I2** S. 54 partly in force; s. 54 not in force at Royal Assent see s. 184(2); s. 54(1)-(4) in force at 1.4.1996 by S.I. 1996/323, art. 4(1)(a), **Sch. 1**

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*Status: Point in time view as at 01/04/2003.*

*Changes to legislation: There are currently no known outstanding effects for the Local Government etc. (Scotland) Act 1994, Part I. (See end of Document for details)*

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## **55 Restriction on disposal of assets and entering into contracts by existing authorities.**

- (1) On and after the relevant date, an existing authority shall not, without the consent of the relevant successor authority or, in a case to which subsection (9) below applies, the Secretary of State—
  - (a) without prejudice to section 74 of the 1973 Act (disposal of land), dispose of any land for a consideration exceeding £250,000; or
  - (b) enter into any of the contracts mentioned in subsection (2) below.
- (2) The contracts referred to in subsection (1)(b) above are—
  - (a) contracts—
    - (i) in terms of which the authority incurs a liability to meet capital expenses within the meaning of section 94 of the 1973 Act (capital expenses); and
    - (ii) where the consideration exceeds £2,500,000; and
  - (b) contracts, other than contracts such as are mentioned in sub-paragraph (a)(i) above—
    - (i) the period of which purports to extend beyond 31st March 1996 or is capable of being so extended; and
    - (ii) where the consideration exceeds £250,000.
- (3) The relevant date for the purposes of this section is such date as the Secretary of State may by order made by statutory instrument determine; and different such dates may be so determined in respect of any of the successor authorities mentioned in subsections (4) to (8) below or, in a case to which subsection (9) below applies, the Secretary of State.
- (4) Subject to subsections (5) to (8) below, the relevant successor authority in relation to any proposed disposal or contract by a regional or district council is—
  - (a) in relation to any disposal of land, the new local authority within whose area the land will be situated; and
  - (b) in relation to any other contracts, any new local authority whose area will include the whole or any part of the area of the existing local authority.
- (5) The relevant successor authority in relation to any proposed disposal of relevant property (within the meaning assigned by paragraph (b) of section 91(1) of this Act) or proposed contract in so far as it relates to functions mentioned in that paragraph is, in the case of—
  - (a) Lothian, Borders, Fife or Central Region, the East of Scotland Water Authority;
  - (b) Strathclyde or Dumfries and Galloway Region, the West of Scotland Water Authority; and
  - (c) Tayside, Highland or Grampian Region or an Islands Area, the North of Scotland Water Authority.
- (6) The relevant successor authority in relation to any proposed disposal or contract by the Central Scotland Water Development Board is the East of Scotland Water Authority.
- (7) The relevant successor authority in relation to any proposed disposal or contract by a police authority or, where an amalgamation scheme has been made, a joint committee for any existing police area is—

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*Status: Point in time view as at 01/04/2003.*

*Changes to legislation: There are currently no known outstanding effects for the Local Government etc. (Scotland) Act 1994, Part 1. (See end of Document for details)*

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- (a) in the case of each of Fife and Dumfries and Galloway, the police authority for the new police area of the same name; and
  - (b) in the case of each of the police authorities or, as the case may be, joint committees for the areas or combined areas shown in brackets in the first column of the Table in section 21B(3) of the <sup>M36</sup>Police (Scotland) Act 1967 (reorganisation of police areas), the joint board for the corresponding combined area shown in that column.
- (8) The relevant successor authority in relation to any proposed disposal or contract by a fire authority or, where an administration scheme has been made, a joint committee, is—
- (a) in the case of each of Fife and Dumfries and Galloway, the fire authority for the new area of the same name; and
  - (b) in the case of each of the fire authorities or, as the case may be, joint committees for the areas or combined areas shown in brackets in the first column of the Table in section 147(4) of the 1973 Act (fire services), the joint board for the corresponding combined area shown in that column.
- (9) Where—
- (a) a disposal of land such as is mentioned in subsection (1)(a) above is of land held or acquired by the authority for the construction or improvement of any road; or
  - (b) a contract such as is mentioned in subsection (2) above is for works for the construction or improvement of any road; and
  - (c) where, in either case, the Secretary of State has given notice to the authority concerned of his intention to make an order under section 12A(1)(a), 12B(1)(a), 12C(1)(b), 12E(1) or 12E(3) of the <sup>M37</sup>Roads (Scotland) Act 1984 directing that a road or proposed road should become a trunk road or that he should be authorised to provide a special road,
- the consent required shall, in either case, be that of the Secretary of State.
- (10) The requirement to seek consent imposed by this section shall not apply to—
- (a) any disposal of land in respect of which the consent of the Secretary of State is required under section 12(7) of the <sup>M38</sup>Housing (Scotland) Act 1987; and
  - (b) any contract entered into by an existing authority in or in connection with the exercise of the power conferred on them by section 24 of the <sup>M39</sup>Local Government Act 1988 (power to provide financial assistance for privately let housing accommodation).
- (11) This section applies to any granting of an option to require an existing authority to make a disposal of land or enter into a contract which would require the consent of a successor authority or the Secretary of State as it applies to such a disposal or contract.
- (12) In this section “existing authority” means a regional or district council, the Central Scotland Water Development Board, any police authority or joint committee for a police force established under the <sup>M40</sup>Police (Scotland) Act 1967, any fire authority or joint committee for a fire brigade established in Scotland under the <sup>M41</sup>Fire Services Act 1947 and, for the purposes of the matters mentioned in subsection (5) above, includes an islands council.

*Status: Point in time view as at 01/04/2003.*

*Changes to legislation: There are currently no known outstanding effects for the Local Government etc. (Scotland) Act 1994, Part I. (See end of Document for details)*

#### Marginal Citations

**M36** 1967 c. 77.

**M37** 1984 c. 54.

**M38** 1987 c. 26.

**M39** 1988 c. 9.

**M40** 1967 c. 77.

**M41** 1947 c. 41.

### 56 **Duty of existing authorities and assessors to provide information to new authorities.**

- (1) Subject to the provisions of this section, existing local authorities and assessors shall provide new authorities with such information as the latter may reasonably require for the purpose of carrying out, whether before or after 1st April 1996, any of their functions.
- (2) A new authority may not require information to be provided from any existing authority or assessor whose area does not correspond, at least in part, with the area of the new authority.
- (3) An assessor shall not be required under subsection (1) above to provide any information to a new authority which he is not required to provide to an existing authority.
- (4) In this section—
  - “assessor” means an assessor appointed under section 116 of the 1973 Act (appointment of assessors);
  - “existing local authority” includes a joint committee and a joint board; and
  - “new authority” means any of the authorities constituted under section 2 of this Act, and includes a joint board.

### 57 **Power and duty of existing local authorities to assist new authorities.**

- (1) An existing local authority may do anything which in their opinion is appropriate for the purpose of—
  - (a) facilitating the transfer of their functions, staff and assets to a new authority; or
  - (b) facilitating the carrying out by a new authority of their functions on and after 1st April 1996.
- (2) Without prejudice to the generality of subsection (1) above, existing local authorities having functions in relation to any part of the area of a new authority may establish, or the Secretary of State may require them to establish, a committee in the area of that new authority to consider any matter which it is expedient they should consider in order to ensure the effective operation of that authority on and after 1st April 1996.
- (3) Existing local authorities may establish, or the Secretary of State may direct them to establish, a committee in relation to the areas of any group of new authorities to consider any matter which it is expedient they should consider in order to ensure the effective operation of those authorities on and after 1st April 1996.

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*Status: Point in time view as at 01/04/2003.*

*Changes to legislation: There are currently no known outstanding effects for the Local Government etc. (Scotland) Act 1994, Part 1. (See end of Document for details)*

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- (4) A committee established under subsection (2) or (3) above 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 such agreement, as may be determined by the Secretary of State.
- (5) The Secretary of State may direct an existing local authority to do anything which in his opinion is appropriate for the purpose of putting a new authority in a position to carry out their functions with effect from 1st April 1996.
- (6) A direction under subsection (5) above—
  - (a) may be made subject to such conditions (for example, as to payment by the new authority) as may be specified in it; and
  - (b) shall be complied with by the authority to which it is made.
- (7) Any expenses incurred by a committee established under subsection (2) or (3) above shall be defrayed by the authorities by whom the committee was established in such proportions respectively as may be agreed amongst or between them or, in default of agreement, as may be determined by the Secretary of State.
- (8) In this section—
  - “existing local authority” includes a joint committee and a joint board; and
  - “new authority” means any of the authorities constituted under section 2 of this Act, and includes a joint board.

## **58 Further provision as to discharge of functions by authorities.**

- (1) Subject to the provisions of this section, a local authority (a “contracting authority”) may agree with any other local authority (a “supplying authority”) that the supplying authority shall carry out for the contracting authority any activity or service which the contracting authority are required to, or may legitimately, carry out.
- (2) An agreement under this section—
  - (a) may provide for activities or services to be carried out by two or more authorities jointly; and
  - (b) may include such terms as to payment as the authorities concerned consider appropriate.
- (3) Anything requiring to be done by a supplying authority under an agreement under this section shall be treated as one of their statutory functions.
- (4) The Secretary of State may by regulations make such provision as he thinks fit in relation to the exercise by local authorities of the power conferred by this section and, without prejudice to the generality of the foregoing, such regulations may include provision—
  - (a) prohibiting or restricting to such extent as may be prescribed the use of the power in relation to such activities or services, or such class or classes of activities or services, as may be so prescribed;
  - (b) specifying, either generally or in relation to such activities or services, or such classes of activities or services, as may be so prescribed, which authorities may enter into agreements under this section.

*Status: Point in time view as at 01/04/2003.*

*Changes to legislation: There are currently no known outstanding effects for the Local Government etc. (Scotland) Act 1994, Part I. (See end of Document for details)*

- (5) This section is without prejudice to any other power under or by virtue of which a local authority may arrange for the carrying out of any of their activities or services by another authority.
- (6) A statutory instrument containing regulations under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) For the purposes of this section “local authority” includes a residuary body and a joint board.

#### Commencement Information

- I3** S. 58 wholly in force at 1.4.1996; s. 58 not in force at Royal Assent see s. 184(2); s. 58 in force for certain purposes at 1.8.1995 by S.I. 1995/702, art. 5; s. 58 in force at 1.4.1996 insofar as not already in force by S.I. 1996/323, art. 4(1)(a), Sch. 1

## 59 Local Acts and instruments.

- (1) Subject to subsection (2) below, any local statutory provision to which this section applies and which is not continued in force by any other provision of this Part of this Act shall—
  - (a) notwithstanding the changes of administrative areas and local authorities effected by or under this Part of 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 1st April 1996 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—
  - (a) subsection (6) below;
  - (b) this Part of this Act;
  - (c) any Act passed after this Act and before 1st April 1996; and
  - (d) any order made under—
    - (i) section 181 of this Act; or
    - (ii) the following provisions of this section.
- (3) Any local statutory provision to which this section applies and which relates to functions exercisable by an existing 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 1st April 1996 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 1st April 1996 and shall have effect subject to any provision to the contrary made by, or by any instrument made under, this Part of 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

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*Status: Point in time view as at 01/04/2003.*

*Changes to legislation: There are currently no known outstanding effects for the Local Government etc. (Scotland) Act 1994, Part 1. (See end of Document for details)*

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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 181 of this Act, the Secretary of State 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 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 local authority appearing to the Secretary of State 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 181 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) without 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 to be expedient.
- (6) All local statutory provisions to which this subsection applies shall cease to have effect on 31st December 1999, but the Secretary of State may—
- (a) by order exempt any such provision from the foregoing provision of this subsection;
  - (b) from time to time by order postpone the date on which any local statutory provision applying to the whole or part of any local government area is to cease to have effect under this subsection.
- (7) An order under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (8) This section applies to any local statutory provision in force immediately before 1st April 1996 and not expressly repealed or revoked by this Act, and subsection (6) above applies to the following local 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;
  - (d) any byelaw; and

*Status: Point in time view as at 01/04/2003.*

*Changes to legislation: There are currently no known outstanding effects for the Local Government etc. (Scotland) Act 1994, Part I. (See end of Document for details)*

(e) any management rule made under section 112 of the <sup>M42</sup>Civic Government (Scotland) Act 1982 (management rules),  
not being a provision relating to a statutory undertaking.

(9) In this section—

“existing local authority” means a regional or district council;

“local authority” means an existing local authority, a joint committee, an authority constituted under section 2 of this Act, a joint board and a residuary body; and, for the purposes of subsection (6) above, includes any local authority in existence prior to 16th May 1975;

“local statutory provision” includes—

- (a) a provision of a public general Act passed with respect only to the whole or part of an existing local government area;
- (b) a provision of an instrument made under such a public general Act;
- (c) an instrument in the nature of a local statutory provision made under any other public general Act;
- (d) a provision of a local Act or a provision of an instrument made under any such Act;
- (e) a provision of an Act confirming a provisional order;
- (f) a provision of an order which was subject to special parliamentary procedure;
- (g) any byelaw; and
- (h) any management rule made under section 112 of the <sup>M43</sup>Civic Government (Scotland) Act 1982 (management rules),

but does not include any enactment or instrument in so far as that enactment or instrument relates to functions mentioned in section 91(1)(b) of this Act nor any order under section 6 of the 1975 Act; 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 or district heating.

#### Marginal Citations

**M42** 1982 c. 45.

**M43** 1982 c. 45.

## 60 Applications to sheriff in cases of difficulty.

Sections 231 (applications to sheriff in cases of difficulty) and 232 (applications to court) of the 1973 Act shall apply in relation to a difficulty arising in the carrying out of this Part of this Act as they apply in relation to a difficulty arising in the carrying out of that Act.

## 61 Interpretation of Part I.

In this Part of this Act, unless the context otherwise requires—

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

“records” shall be construed in accordance with section 53 of this Act;



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*Status: Point in time view as at 01/04/2003.*

*Changes to legislation: There are currently no known outstanding effects for the Local Government etc. (Scotland) Act 1994, Part I. (See end of Document for details)*

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“the 1972 Act” means the <sup>M44</sup>Town and Country Planning (Scotland) Act 1972;

“the 1992 Act” means the <sup>M45</sup>Local Government Finance Act 1992, and expressions used in this Part of this Act and in the 1973 Act shall have the same meanings in this Part as in that Act.

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**Marginal Citations**

**M44** 1972 c. 52.

**M45** 1992 c. 14.

**Status:**

Point in time view as at 01/04/2003.

**Changes to legislation:**

There are currently no known outstanding effects for the Local Government etc. (Scotland) Act 1994, Part I.