



# Local Government (Scotland) Act 1894

## 1894 CHAPTER 58

### PART IV

#### NEW POWERS CONFERRED UPON PARISH COUNCILS IN LANDWARD PARISHES AND LANDWARD PARTS OF PARISHES

#### **23 Landward committees to be constituted in certain parishes**

- (1) In this Part of this Act the expression parish council does not include the parish council of a burghal parish.
- (2) For the purpose of exercising and performing the powers and duties conferred and imposed by this Part of this Act, in the case of a parish which—
  - (a) is partly landward and partly burghal; or
  - (b) comprises a police burgh or part of a police burgh,

there shall be a committee of the parish council, in this Act referred to as the landward committee, which shall in every case consist of the whole number of parish councillors for such parish, excepting only the councillors representing the burghal part of the parish, or such police burgh, or part of a police burgh; and, in the case of such parishes, the powers (except the power to raise money by rate or loan) and duties conferred and imposed on a parish council by this Part of this Act, shall be exercised and performed by the landward committee, which for such purpose and for the purpose of the Public Libraries Consolidation (Scotland) Act, 1887, shall be deemed to be the parish council of the parish, and which may sue and be sued as such landward committee. For such purpose, such burghal part and such police burgh or part of a police burgh shall be deemed to be outwith such parish, and shall not be rated by the parish council.

Provided that where, in terms of section nine of this Act, a landward committee would consist of less than five members, the Board may, if they deem it expedient with a view to the proper transaction of business, by order provide for the election, along with, and subject to the same provisions as, the election of parish councillors, of such additional number of members of such landward committee as shall be named in the order. In such case, if the election of the landward committee takes place according to parish wards, at least one member shall be added for each ward. Such landward committee,

as increased, shall appoint from their own number to the parish council the requisite number of parish councillors, as determined in terms of section nine of this Act, and shall fill any casual vacancy occurring in the number of such parish councillors or in the landward committee.

- (3) A landward committee may exercise and perform their powers and duties under this Part of this Act without reference to and without the approval of the parish council. The provisions of sub-sections two, three, five, and six of section nineteen of this Act shall apply to a landward committee with the substitution of the expression " landward committee " for " parish council " occurring therein.
- (4) Where the population of the landward part of a parish partly landward and partly burghal, exclusive of any police burgh or part of a police burgh comprised therein, does not exceed one hundred, a landward committee, as provided for in sub-section two of this section, shall not be constituted unless and until the Board shall so order on the application of not fewer than five parish electors residing within such landward part.

## **24 Additional powers of parish councils**

- (1) A parish council shall have the following powers, namely, power—
  - (a) to provide or acquire buildings for public offices and for meetings, and for any purposes connected with parish business, or with the powers or duties of the parish council, and to provide or acquire land for such buildings ; and
  - (b) to provide, or acquire, maintain, lay out, and improve grounds for public recreation ; and
  - (c) to acquire by agreement any right of way, whether within the parish or in an adjoining parish, the acquisition of which is beneficial to the inhabitants of the parish or of any part thereof; and
  - (d) to accept and hold any gifts of property for the benefit of the parish; and
  - (e) to execute any works (including works of maintenance or improvement) incidental to or consequential on the exercise of any of the foregoing powers, or in relation to any property of the parish council; and
  - (f) to contribute towards the expense of doing any of the things above mentioned, or to agree or combine with any other parish council, or other authority or person, to do or contribute towards the expense of doing, any of the things above mentioned.
- (2) A parish council may let, sell, or exchange any land or buildings provided or acquired under this Part of this Act, and vested in the council, but the power of letting for more than a year and the power of sale or exchange shall not be exercised without the consent of the Board.
- (3) With a view to the due enforcement of the provisions of the Public Health Acts, a parish council shall have and may exercise, within, or in respect to, the parish the same powers as are conferred upon any two householders by section ninety-six of the Public Health (Scotland) Act, 1867, and upon any five ratepayers by section seventeen of the principal Act, and upon a county council by sub-section (2) of section fifty-three of the principal Act.
- (4) A parish council shall have the same power of making a representation with respect to allotments as is conferred on parliamentary electors by the Allotments (Scotland) Act, 1892.

After a parish council is elected for any parish, the powers and duties of allotment managers under the Allotments (Scotland) Act, 1892, shall, in relation to allotments provided for the parish, be exercised and performed by the parish council, without any appointment.

- (5) A parish council shall have the same power of presenting a petition with regard to a demand for small holdings in a county as is conferred on any one or more county electors by the Small Holdings Act, 1892, and in lieu of the triennial election by the county electors provided by section twenty-four of the said Act, the parish council of the parish in which the holdings are situated shall appoint two representatives from their own number to serve as members of the committee of the county council.
- (6) A parish council shall have the same power of making any complaint or representation as to unhealthy dwellings or obstructive buildings as is conferred on inhabitant householders by the Housing of the Working Classes Act, 1890.

## **25 Powers for acquisition of land**

- (1) For the purpose of the acquisition of land by a parish council, the Lands Clauses Acts shall be incorporated with this Act, except the provisions of these Acts relating to the purchase and taking of land otherwise than by agreement.
- (2) If a parish council are unable to acquire by agreement, and on reasonable terms, suitable land for any purpose for which they are authorised and desire to acquire it, they may make a representation to the county council, and the county council shall inquire into the representation.
- (3) If on any such representation, a county council are satisfied that suitable land for the purpose of the parish council cannot be acquired on reasonable terms by voluntary agreement, and that the circumstances are such as to make it proper that the county council should proceed under this section, they shall publish once at least in each of two consecutive weeks in some newspaper circulating in the locality, an advertisement stating shortly the purpose for which the land is proposed to be taken, mentioning a place at which a plan of the proposed works, if any, may be seen at reasonable hours, and stating the quantity of land that is required. Thereafter they shall cause public inquiry to be made in the parish, and notice to be given, both publicly in the parish and severally to the owners, lessees, and occupiers of the land proposed to be taken, either by delivery at, or by post in a registered letter addressed to, the usual or last known place of abode of such owners, lessees, and occupiers, and all persons whose interests would be affected shall be permitted to attend at the inquiry, and to support or oppose the taking of the land.
- (4) After the completion of the inquiry, and after considering all objections made by any persons whose interests would be affected, the county council may make an order for putting in force, with respect to the said land or any part thereof, the provisions of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement.
- (5) If in any case the county council refuse to make such order, the parish council may appeal to the Board, and the Board after local inquiry may make the order, and this section shall apply as if the order had been made by the county council. Any order made under this sub-section overruling the decision of the county council shall be laid before Parliament.

- (6) A copy of any order made under this section shall be served by the county council in the manner in which and upon the person or persons upon whom notices in respect of such land are herein-before required to be served, together with a statement that the order will become final and have the effect of an Act of-Parliament, unless within a period of one month after such service, a memorial by some person whose interests would be affected is presented to the Board, praying that the order shall not become law without further inquiry.
- (7) The order shall be deposited with the Board, who shall inquire whether the provisions of this section have been in all respects complied with; and if the Board are satisfied that this has been done, then, after the expiration of the said period of one month—
  - (a) if no memorial has been presented, or if every such memorial has been withdrawn, the Board shall without further inquiry confirm the order:
  - (b) if a memorial has been presented, the Board shall proceed to hold a local public inquiry, and shall, after such inquiry, either confirm, with or without amendment, or disallow the order:
  - (c) upon any such confirmation, the order, and if amended as so amended, shall become final, and have the effect of an Act of Parliament, and the confirmation by the Board shall be conclusive evidence that the order has been duly made, and is within the powers conferred by this Act, and that the requirements of this Act have been complied with.

Provided always that the Board may, and when required within the said period of one month by any party interested who has presented a memorial against the order shall, state a special case on the question whether the proposed order is within the powers conferred by this Act for the opinion of either division of the Court of Session, who are hereby authorised finally to determine the same along with any question of expenses.

- (8) Where the Board are authorised, or required, to make any inquiry under this section, they may cause such inquiry to be made by any inspector or officer of the Board, or by any other person specially nominated in writing by the Board, and such inspector or officer or person shall be entitled to summon witnesses, and examine them on oath, and to call for the production of books, documents, and accounts. The costs incurred in relation to such inquiry, including the remuneration of any person specially nominated to hold the same, not exceeding three guineas a day, shall be paid by the county councils and other authorities concerned in such inquiry, or by such of them and in such proportions as the Board may direct, and the said Board may certify the amount of the costs incurred, and any sum so certified shall be a debt to the Board from the county council or authority directed to pay the same.
- (9) The order shall be carried into effect by the county council.
- (10) Any order made under this section for the purpose of the purchase of land otherwise than by agreement, shall incorporate the Lands Clauses Acts, and section six and sections seventy to seventy-eight (both inclusive) of the Railways Clauses (Scotland) Consolidation Act, 1845, with the necessary adaptations: Provided that—
  - (a) Any question of disputed compensation shall be referred to the arbitration of a sole arbiter appointed by the parties, or if the parties do not concur in the appointment of a sole arbiter then, on the application of either of them, by the Board, and the remuneration to be paid to the arbiter appointed by the Board shall be fixed by the Board. An arbiter appointed under this subsection shall be deemed to be an arbiter within the meaning of the Lands Clauses Acts, and the provisions of these Acts with respect to an arbitration

- shall apply accordingly; and the arbiter shall, notwithstanding anything in the said Acts, determine the amount of the expenses in the arbitration, and such determination shall be final; and
- (b) In determining the amount of disputed compensation, the arbiter shall not make any allowance in respect of the purchase being compulsory,
  - (c) The parish council shall make and shall jointly with the proprietor maintain sufficient fences for separating the land taken from the lands not taken.
  - (d) In construing for the purposes of this section any section or Acts incorporated with or put in force under this section, this Act, together with any order under this section, shall be deemed to be the special Act.
- (11) At any inquiry or arbitration held under this section, the person or persons holding the inquiry or arbitration, shall hear any authorities or parties whose interests would be affected, by themselves or their agents, and may hear witnesses, but shall not, except with consent of the Board, hear counsel or expert witnesses.
  - (12) A person holding a public inquiry for the purposes of this section on behalf of the county council shall have the same powers as, and may receive remuneration not exceeding that payable to, a person specially nominated by the Board to hold such an inquiry under this section.
  - (13) The county council or Board, as the case maybe, shall not make any order for purchasing the whole or any part of any park, garden, pleasure ground, or other land required for the amenity or convenience of any dwelling-house, or any land the property of a railway company or canal company which is or may be required for the purposes of their undertaking, or any land which in the opinion of the county council or Board is being held and may be required for the extension of a factory or public work.
  - (14) The county council or Board, as the case may be, shall in making an order for purchasing land, have regard to the extent of land held in the neighbourhood by any owner, and to the convenience of other property belonging to the same owner, and shall, so far as is practicable, avoid taking an undue or inconvenient quantity of land from any one owner.
  - (15) Any land acquired under this section shall be vested in the parish council.
  - (16) The expenses of a county council incurred under this section shall be defrayed by the parish council.
  - (17) The Boards shall in their annual report include a statement of any proceedings under this section.

## **26 Leasing of land for allotments or common pasture**

- (1) A parish council shall have power to take land on lease for allotments or, not exceeding .twenty acres in extent, for common pasture, and if they are satisfied that allotments or common pasture are required, and are unable to obtain on lease by agreement on reasonable terms suitable land for allotments or for common pasture, they shall represent the case to the county council, and the county council may, subject to the restrictions in this section, make an order authorising the parish council to take on lease compulsorily for allotments, for a period of not less than ten years nor more than thirty-five years, such land in or near the parish as is specified in the order, and the order shall, as respects confirmation and otherwise, be subject to the like provisions as if it were an order of the county council made under the last preceding section of this

Act, and that section shall apply as if it were herein re-enacted with the substitution of taking on lease for purchase, and with the other necessary modifications.

- (2) A sole arbiter, who shall be appointed in accordance with the provisions of the preceding section, and to whom the provisions of that section shall apply, shall have power to determine any question—
- (a) as to the terms and conditions of the proposed lease; or
  - (b) as to the amount of compensation for severance; or
  - (c) as to the compensation payable to any tenant in respect of the land taken forming part of an existing tenancy; or
  - (d) as to the apportionment of the rent between the land taken by the parish council and the land retained by the tenant; or
  - (e) as to any other matter incidental to the taking on lease of the land by the council, or the surrender thereof at the end of their tenancy;
- but the arbiter, in fixing the rent, shall not make any allowance in respect of the lease being compulsory.
- (3) Any compensation awarded to a tenant in respect of any depreciation of the value to him of the residue of his holding caused by the withdrawal from the holding of the land taken on lease by the parish council, shall, as far as possible, be provided for by taking such compensation into account in fixing, as the case may require, the rent to be paid by the parish council for the land taken on lease by them, and the apportioned rent, if any, to be paid by the tenant for that portion of the holding which is not taken on lease by the parish council: Provided always that during the unexpired period of the tenant's lease the sum in cumulo of the apportioned portions of rent shall not be less than the rent formerly paid by the tenant.
- (4) The award of the arbiter, or a copy thereof, together with a report signed by him as to the condition of the land taken by the parish council, shall be deposited and preserved with the public books and papers of the parish council, and any person interested shall at all reasonable times be at liberty to inspect the same, and to take copies thereof.
- (5) Save as herein-after mentioned, sections five to eight inclusive, and section fourteen and the proviso to section twelve of the Allotments (Scotland) Act, 1892, shall apply to any allotment taken on lease by a parish council in like manner as if that council were the local authority and also the allotment managers:

Provided that the parish council—

- (a) may let to one person an allotment or allotments exceeding one acre, but, if the land is taken on lease compulsorily, either not exceeding in the whole four acres of pasture or one acre of arable and three acres of pasture, or not exceeding four pounds in annual value ; and
  - (b) may permit to be erected, on the allotment, any stable, byre, or barn : provided that such stable, byre, or barn shall not, unless erected with the assent in writing of the landlord, be the subject of compensation, but may be removed by the tenant on the determination of the tenancy ; and
  - (c) shall not break up, or permit to be broken up, any permanent pasture, without the assent in writing of the landlord.
- (6) On the determination of any tenancy created by a compulsory lease, a sole arbiter who shall be appointed in accordance with the provisions of the last preceding section and to whom the provisions of that section shall apply, shall have power to determine

the amount due by the landlord for compensation for improvements, or by the parish council for depreciation.

- (7) The order for compulsory taking on lease may apply, with any adaptations which may be prescribed by general or special order of the Board, such of the provisions of the Lands Clauses Acts (including those relating to the acquisition of land otherwise than by agreement) as appear to the county council or Board sufficient for carrying into effect the order, and for the protection of the persons interested in the land and of the parish council.
- (8) Nothing in this section shall authorise the compulsory taking on lease of any mines or minerals, or confer the right to take, sell, or carry away, any stone, gravel, sand, or clay, or authorise the taking on lease of any land which is already owned, or occupied, as a small holding within the meaning of the Small Holdings Act, 1892, or under the Crofters Holdings Act, 1886, or any Act amending the same.
- (9) If the land taken on lease under this section shall at any time, during the tenancy thereof by the parish council, be shown to the satisfaction of the county council to be required by the landlord for the purpose of working and winning the mines, minerals, or surface minerals thereunder, or for feuing for building, or for any road or work to be used in connexion with such working or winning or feuing, it shall be lawful for the landlord of such land to resume possession thereof upon giving to the parish council twelve calendar months previous notice in writing of his intention so to do, and upon such resumption the landlord shall pay to the parish council and to the allotment holders of the land for the time being such sum by way of compensation for the loss of such land for the purposes of allotments as may be agreed upon by the landlord and the parish council, or, in default of such agreement, as may be awarded by a sole arbiter, who shall be appointed in accordance with the provisions of the last preceding section and to whom the provisions of that section shall apply.

The word " landlord " in this sub-section means the person for the time being entitled to receive the rent of the land taken on lease by the parish council.

- (10) The Board shall in their annual report include a statement of any proceedings under this section.

## **27 Special parish rate may be levied**

- (1) A parish council may for the purposes of this Part of this Act (including any annual charge, whether of principal or interest, in respect of any loan), levy within the parish a rate not exceeding sixpence in the pound on the annual value of the lands and heritages within such parish, as ascertained for the purposes of the Poor Law (Scotland) Act, 1845, in this Act referred to as the special parish rate.
- (2) Such special parish rate shall, subject to the provisions of this Act, be levied and collected along with, and as an addition to, the poor rate, and with the same remedies and modes of recovery, but in the demand note the special parish rate shall be separately set forth and demanded.

Provided that, in parishes where no poor rate is levied, or where the poor rate is imposed according to the provisions of a local Act, or according to established usage, such special parish rate shall be levied according to the mode of assessment specified in section thirty-four of the Poor Law (Scotland) Act, 1845.

- (3) In parishes in which powers and duties are exercised and performed under this Part of this Act by a landward committee, such landward committee shall annually, and not later than the twelfth day of June in each year, certify to the parish council the amount, if any, required to be provided by means of a special parish rate, and the parish council shall, as soon as may be, pay to the landward committee such amount.

## **28 Borrowing for this Part of Act**

- (1) A parish council, acting under this Part of this Act, may, for any of the following purposes, that is to say—
- (a) for purchasing any land, or erecting any buildings, Which they are authorised to purchase or erect; and
  - (b) for any permanent work or other thing which they are authorised to execute or do, and the cost of which ought, in the opinion of the Board, to be spread over a term of years;
- borrow money, with the consent of the Board.
- (2) In parishes where powers and duties under this Part of this Act are exercised and performed by a landward committee, it shall be the duty of the parish council to transmit to the Board any recommendation of the landward committee for the raising of a loan in terms of this section ; and, provided the necessary consent be given, to raise the loan accordingly.
- (3) Any loan under this Part of this Act shall be made on the security of the special parish rate.
- (4) A county council may lend to a parish council any money which the parish council are authorised to borrow under this Part of this Act, and may, if necessary, raise the money by loan.
- (5) A loan raised by a parish council under this section shall be repaid—
- (a) if for the purchase of land or the erection of buildings, within such period not exceeding forty years; and
  - (b) if for any other purpose, within such period not exceeding thirty years
- as the Board may determine in each case.
- (6) A parish council shall pay off every loan under this section, either by equal yearly or half-yearly instalments of principal, or of principal and interest combined, or by means of a sinking fund set apart, invested, and applied in accordance with regulations which may from time to time be made, in that behalf, by the Secretary for Scotland.

## **29 Maintenance of public ways**

A parish council may repair and maintain all or any of the public ways (not being highways or footpaths at the side of a highway within the meaning of the Roads and Bridges (Scotland) Act, 1878) within the parish, and the expense of such repair and maintenance shall be defrayed out of the special parish rate, but this power shall not nor shall the exercise thereof relieve any other authority or person from any liability with respect to such repair or maintenance ; and such repair or maintenance shall not involve the parish council in any liability for damages to person or property resulting from the condition in which any such way may be maintained.