Local Government in Scotland Bill
[AS INTRODUCED]

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Local Government in Scotland Bill
[AS INTRODUCED]

An Act of the Scottish Parliament to provide anew about the way in which local authorities discharge their functions and about the local provision of certain public services; to give local authorities power to do things which they consider will advance well-being; to make some minor, miscellaneous amendments of certain provisions of law about local authorities’ meetings and of other provisions connected with the functions of local authorities; and for connected purposes.

PART 1
BEST VALUE AND ACCOUNTABILITY
Duty to secure best value

1 Local authorities’ duty to secure best value

(1) It is the duty of a local authority to make arrangements which secure best value.

(2) Best value is continuous improvement in the performance of the authority’s functions.

(3) In securing best value, the local authority shall maintain an appropriate balance among—

(a) the quality of its performance of its functions;

(b) the cost to the authority of that performance; and

(c) the cost to persons of any service provided by it for them on a wholly or partly rechargeable basis.

(4) In maintaining that balance, the local authority shall have regard to—

(a) efficiency;

(b) effectiveness;

(c) economy; and

(d) the need to meet the equal opportunity requirements.

(5) In this section, “equal opportunity requirements” has the same meaning as in Section L2 of Part II of Schedule 5 to the Scotland Act 1998 (c.46).
2 Considerations bearing on performance of duty under section 1

(1) In the performance of its duties under section 1 above, a local authority shall have regard—

(a) to any guidance provided by the Scottish Ministers for local authorities on the performance of those duties; and such guidance may include guidance on—

(i) how to make and what is to be included in the arrangements referred to in subsection (1) of that section;

(ii) how to implement the duty imposed by that subsection; and

(b) to what are, whether by reference to any generally recognised, published code or otherwise, regarded as proper arrangements for the purposes of section 1(1) above (or purposes which include those purposes).

(2) Before providing guidance under this section, the Scottish Ministers shall consult such associations of local authorities and such other persons as they think appropriate.

(3) In the event of a conflict in any respect between the considerations to which a local authority is to have regard under paragraph (a) of subsection (1) above and those to which it has to have regard under paragraph (b) of that subsection, it shall in that respect have regard only to those within paragraph (a).

Enforcement

3 Action by Accounts Commission following report by Controller of Audit

(1) On a report being made to it by the Controller of Audit under section 102(1) of the Local Government (Scotland) Act 1973 (c.65) (the “1973 Act”), the Accounts Commission for Scotland may do, in any order, all or any of the following, or none of them—

(a) direct the Controller of Audit to carry out further investigations;

(b) hold a hearing;

(c) state its findings.

(2) Findings which do not follow a hearing shall, for the purposes of section 103D of the 1973 Act, as applied by section 4 below, be treated as the findings of the members of the Commission holding a hearing.

4 Hearings under section 3 above

(1) Sections 103C (procedure, evidence etc at hearings held by Commission) and 103D (findings of hearings) of the 1973 Act apply to hearings held under section 3(1)(b) above as they apply to hearings held under section 103B(1)(b) of that Act.

(2) For the purposes of subsection (1) above—

(a) sections 103C(2) and (5) and 103D(a) of the 1973 Act shall be ignored; and

(b) the other provisions of section 103D shall be taken to extend to findings which do not follow a hearing.

(3) Findings made under section 103D as applied by this section may include recommendations and the persons to whom those recommendations may be made include the Scottish Ministers.
(4) At a hearing held under section 3 above, the Accounts Commission—
   (a) shall afford—
      (i) any local authority likely to be affected by any findings made; and
      (ii) any person likely to be so affected (or the representative of such a person),
   the opportunity of appearing and being heard;
   (b) may require members or officers or former members or officers of any local
       authority to attend and give oral evidence.

(5) The Commission may pay a person attending a hearing under subsection (4)(b) above
    such expenses as the Commission thinks fit.

(6) A person wilfully or negligently failing to comply with a requirement under subsection
    (4)(b) above is guilty of an offence and is, on summary conviction, liable to a fine not
    exceeding level 3 on the standard scale.

(7) Subsections (1), (6) and (7) of section 103 of the 1973 Act (which are superseded by
    provisions of section 3 above and this section) are repealed.

5 Action by local authorities on receipt of findings

(1) A local authority receiving a copy of findings under section 103D of the 1973 Act as
    applied by section 4 above shall consider those findings in accordance with section
    103E(1) and (2) of that Act and subsections (3) to (7) of the said section 103E shall
    apply accordingly.

(2) Sections 5 and 6 of the Local Government Act 1992 (c.19) are repealed.

6 Enforcement: preliminary notice

(1) If (whether or not on a recommendation being made under section 103D of the 1973 Act
    as applied by section 4 above) it appears to the Scottish Ministers—
    (a) that a local authority is not complying or has not complied with section 1 above;
    and
    (b) that giving the local authority an enforcement direction is justified in order to
        protect the public interest from substantial harm,
    they may serve a preliminary notice on the authority.

(2) A preliminary notice is a written notice which—
    (a) informs the authority of its apparent failure to comply with section 1 above; and
    (b) requires the authority to submit to the Scottish Ministers, within such time as is
        specified in the notice, a written response which—
        (i) states that it has not failed to comply with section 1 above in the respects
            described in the notice and justifies the statement; or
        (ii) states it has so failed but gives reasons why they should not give a direction
            under subsection (3) below.

(3) Where, following the service of a preliminary notice and the expiry of the time specified
    in it under subsection (2)(b) above, it still appears to the Scottish Ministers that the local
    authority is not complying with section 1 above and that action by them under this
    section is justified, they may give the authority an enforcement direction.
7 Enforcement directions

(1) An enforcement direction is a direction by the Scottish Ministers requiring the local authority to which it is given to take such action as is specified in the direction being action calculated to remedy or prevent the recurrence of its failure to comply with section 1 above.

(2) An enforcement direction may place such conditions as the Scottish Ministers may specify in it upon the carrying out of such functions of the local authority as are so specified.

(3) The action referred to in subsection (1) above may include rectification of accounts.

(4) The Scottish Ministers may vary an enforcement direction by giving a further such direction.

(5) A further such direction need not proceed upon a further preliminary notice under section 6 above.

(6) An enforcement direction may be revoked by the Scottish Ministers.

(7) It is the duty of the local authority to which an enforcement direction is given to comply with it.

Other provisions about best value

8 Accounts Commission’s studies and recommendations to include aspects of securing best value

(1) In subsection (1) of section 97A (Commission’s studies for improving economy etc.) of the 1973 Act—

(a) after “for”, where first occurring, there is inserted—

“(a) the securing by local authorities of best value;

(b)”;

(b) for “for”, where second occurring, there is inserted—

“(c)”.

(2) After that subsection there is inserted—

“(1A)In subsection (1)(a) above, the references to best value and the securing of it are references to best value within the meaning of section 1 of the Local Government in Scotland Act 2002 (asp 00) and the securing of it in accordance with that section.”.

9 Auditor’s duty in relation to aspects of best value

(1) Section 99 (duties of auditors) of the 1973 Act is renumbered as subsection (1) of that section and, in that subsection, in paragraph (c), for the words from “economy” onward there is substituted “best value.”.

(2) After that subsection there is inserted—
“(2) In subsection (1) above, the references to best value and arrangements for securing it are references to best value within the meaning of section 1 of the Local Government in Scotland Act 2002 (as 00) and the arrangements for securing it which are to be made under that section.”.

Relaxation of rules about contracts and supply of goods and services

10 Local authority contracts: relaxation of exclusion of non-commercial considerations

(1) The following provisions of section 17(5) of the Local Government Act 1988 (c.9) (the “1988 Act”) do not operate in relation to a local authority in any of the cases specified in subsection (2) below—

paragraph (a) (which provides that the terms and conditions of employment of, and certain other arrangements affecting, contractors’ workers are to be disregarded by authorities when exercising certain functions relating to public supply or works contracts);

paragraph (b) (which provides that the question whether contractors sub-contract to self-employed individuals on a services-only basis is to be likewise disregarded); and

paragraph (d) so far as relating to the conduct of contractors or their workers in industrial disputes between them (which paragraph provides that such conduct is to be likewise disregarded).

(2) Those cases are—

(a) where the local authority reasonably seeks to ensure that a contractor with the authority will comply with the contractor’s obligations under the contract;

(b) where the local authority reasonably seeks to ensure that a contractor with the authority will perform the contractor’s obligations under the contract in a way which will not prevent the authority from securing best value or hinder it in doing so; and

(c) where the local authority has reasonable grounds for believing that the trade contractor’s implementation of the contract with the authority would entail a relevant transfer within the meaning of the Transfer of Undertakings (Protection of Employment) Regulations 1981 (S.I. 1981/1794).

(3) Section 17(5)(h) of the 1988 Act (which provides that the use or non-use by contractors of services provided under the Building (Scotland) Act 1959 (c.24) is to be disregarded by authorities when exercising certain functions relating to public supply or works’ contracts) ceases to have effect in relation to local authorities.

(4) In this section, “contractor” has the same meaning as in section 17 of the 1988 Act.

11 Relaxation of restrictions on supply of goods and services etc by local authorities

(1) The Local Authorities (Goods and Services) Act 1970 (c.39) is modified as provided in subsections (2) and (3) below.

(2) In section 1 (supply of goods and services etc by local authorities to public bodies)—

(a) in subsection (1), for “public body within the meaning of this section” and “body”, wherever subsequently occurring, there is, in each case, substituted “person”;
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(b) after that subsection there is inserted—

“(1A) A local authority shall not, in relation to any significant trading operation carried on by it, enter into an agreement under subsection (1) above with any person to whom this subsection applies if the likely result of doing so would be that the commercial services income accruing to the authority in any financial year under that and all other such agreements already entered into by the authority with such persons in relation to that operation would exceed the statutory limit.

(1B) Subsection (1A) above applies to any person other than—

(a) another local authority;
(b) a public authority or body;
(c) a body which, not being a public body, has functions of a public nature or engages in activities of that nature;
(d) a person who enters into a contract with the local authority to provide it with goods or services in the circumstances set out in subsection (1J) below.

(1C) The restriction in subsection (1A) does not prevent a local authority from entering into an agreement where the likely result of doing so would be that the income referred to in that subsection will exceed the limit there referred to if the Scottish Ministers give prior consent to its doing so.

(1D) In subsection (1A) above—

(a) the “commercial services” income of a local authority is that part of its income which—

(i) is derived from agreements entered into for all or any of the purposes set out in subsection (1) above; and
(ii) is, in accordance with proper accounting practices, credited to a trading account kept by the authority for a significant trading operation,

but excluding any income derived from an agreement entered into with a body referred to in subsection (1B)(c) above where the purpose of the agreement is to facilitate the discharge of the body’s public functions or the carrying out of its public activities;

(b) the “statutory limit” for a significant trading operation is such amount as the Scottish Ministers may, by order, fix for that operation.

(1E) An amount so fixed may be expressed as a fraction of any other amount specified or referred to in the order.

(1F) Different amounts may be so fixed for different cases or classes of case.

(1G) Where, for any case, no amount has been so fixed, the prohibition in subsection (1A) above applies, the condition of its application set out in that subsection being ignored.

(1H) An order under subsection (1C) above shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.
(1I) Before making such an order, the Scottish Ministers shall consult such persons as they think fit.

(1J) The circumstances referred to in paragraph (d) of subsection (1B) above are that the local authority considers that the provision of the goods or services under the contract mentioned in that paragraph will be facilitated if the person who has entered into the contract is within that paragraph.

(1K) A local authority shall, before entering any such agreement as is referred to in subsection (1) above, have regard to whether doing so will be likely to promote or improve the well-being of—

(a) its area and persons within that area;

(b) either of those.

(1L) For the purposes of subsection (1K) above, “well-being” is to be construed in the same way as it is construed for the purposes of section 21 of the Local Government in Scotland Act 2002 (asp 00).

(1M) References in this section to a significant trading operation are, in relation to a local authority, references to a trading operation for which, in accordance with proper accounting practices (within the meaning of section 14 of the Local Government in Scotland Act 2002 (asp 00)) the authority keeps trading accounts.”;

(c) in subsection (4) the definition of “public body” and subsections (5) and (6) are repealed.

(3) In section 2 (supplemental)—

(a) in subsection (1) for “public body” there is substituted “person”; and

(b) after subsection (2) (duty to keep separate accounts in respect of agreements for supply of goods services etc) is repealed.

12 Trading operations and accounts

(1) It is the duty of a local authority to conduct each of its significant trading operations so that, as respects that operation—

(a) in relation to each successive three year period; and

(b) taking each one of those years with the two others, revenue is not less than expenditure.

(2) In subsection (1) above, the references to a local authority’s significant trading operations are references to those of its trading operations for which it must, in accordance with proper accounting practices, keep trading accounts and, in this subsection, “proper accounting practices” is to be construed in accordance with section 14(2) below.

Disposal of land for less than full value

13 Disposal of land by local authorities for less than full value

In section 74 of the 1973 Act—
(a) in subsection (2) (prohibition of disposal of land for less than best consideration reasonably obtainable except with consent) for the words “with the consent of the Secretary of State,” there is substituted “in accordance with regulations under subsection (2C) below;”;

(b) after subsection (2) there are inserted the following subsections—

“(2A) Subsection (2) does not extend to a disposal where—

(a) the best consideration that can reasonably be obtained is less than the threshold amount; or

(b) the difference between that consideration and the proposed consideration is less than the marginal amount.

(2B) The Scottish Ministers shall, by regulations, fix the threshold amount and the marginal amount for the purposes of subsection (2A) above.

(2C) The Scottish Ministers may, by regulations, provide as to the circumstances in which and procedure by which local authorities may, under this section, dispose of land for a consideration less than the best that can reasonably be obtained.

(2D) Those regulations may include provision—

(a) requiring a local authority proposing to dispose of land at less than the best consideration that can reasonably be obtained to appraise and compare the costs and other disbenefits and the benefits of the proposal;

(b) requiring the local authority, before deciding in favour of the proposal, to be satisfied that so deciding would be reasonable; and

(c) setting out factors to which the local authority must have regard when considering whether its decision would be reasonable.

(2E) References in this section to the best consideration that can reasonably be obtained by a local authority are references to that consideration as assessed by a suitably qualified valuer.

(2F) In appointing and instructing a suitably qualified valuer for the purposes of subsection (2E) above, the local authority shall have regard to any guidance provided by the Scottish Ministers on—

(a) what are suitable qualifications;

(b) what factors are to be or not to be taken into account by the valuer in assessing the consideration referred to in that subsection.”.

Accounts, finance and performance accountability

14 Proper accounting practices

(1) It is the duty of a local authority to observe proper accounting practices.

(2) In subsection (1) above and in paragraph (b) of section 99 (auditor to be satisfied that proper accounting practices have been observed) of the 1973 Act, the references to proper accounting practices are references to accounting practices which fall within one or more of the following—

(a) those which the local authority is required to observe by virtue of any enactment;
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(b) those which have been specified in guidance issued for the purposes of this section and that section by the Scottish Ministers;

(c) those which, whether by reference to any generally recognised, published code or otherwise, are regarded as proper accounting practices to be observed in the preparation and publication of accounts of local authorities.

(3) In the event of a conflict in any respect between the practices within paragraph (a) of subsection (2) above and those within paragraph (b) or (c) of that subsection, only those within paragraph (a) are to be regarded as proper accounting practices in that respect, and in the event of a conflict in any respect between those within paragraph (b) and paragraph (c) of that subsection, only those within paragraph (b) are, in that respect, to be so regarded.

15 Publication by local authorities of information about finance and performance

(1) It is the duty of a local authority to make arrangements for the reporting to the public of the outcome of the performance of its functions.

(2) Subject to subsections (3) and (6) below, it is for the local authority to determine the form, content and frequency of and time limits for reports made under subsection (1) above, to whom they are to be given and by what means they are to be published or made available to members of the public.

(3) The Scottish Ministers may, by regulations, make provision governing any of the matters set out in subsection (2) above.

(4) Such regulations shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.

(5) Before making such regulations, the Scottish Ministers shall consult such associations of local authorities and such other persons as they think fit.

(6) Such regulations may include provision—

(a) for a summary of the local authority’s assets and their value, its sources of income, the amounts derived from those sources, and its expenditures to be included in that which is to be reported under subsection (1) above;

(b) for the local authority’s trading accounts or a summary thereof to be included in that which is to be reported under subsection (1) above;

(c) for a summary of the authority’s expenditure under such works contracts as may be specified in the regulations to be included in that which is to be reported under subsection (1) above;

(d) for the publication of the information which is to be provided under section 1 (power of Accounts Commission to direct publication of information about standards of performance) of the Local Government Act 1992 (c.19), to be included in that which is to be reported under subsection (1) above; and

(e) for—

(i) a statement setting out the arrangements the local authority had in place under section 1 above during the financial year immediately preceding that in which the statement is made and describing what it did under those arrangements and to what effect;
(ii) a statement specifying by what means and when the local authority proposes to carry out its duties under this section during the remainder of the year in which the statement is made; and

(iii) a statement specifying any unimplemented recommendations about the performance of the authority’s functions made to the authority by any person discharging a power or duty under an enactment to make the recommendation,

to be included in that which is to be reported under subsection (1) above.

(7) The Scottish Ministers may issue guidance to local authorities on how those authorities might carry out their functions under this section.

(8) Before doing so, the Scottish Ministers shall consult such associations of local authorities and such other persons as they think fit.

(9) In section 1(1) (power of Accounts Commission to direct publication of information about standards of performance) of the Local Government Act 1992 (c.19)—

(a) after “each” there is inserted “at such times as it thinks fit”; and

(b) after “effectiveness” there is inserted “and of securing best value in accordance with section 1 of the Local Government in Scotland Act (asp 00)’”.

PART 2
COMMUNITY PLANNING

16 Community planning

(1) It is the duty of a local authority to initiate and, having done so, to maintain and facilitate a process (in this Act, called “community planning”) by which the public services provided in the area of the local authority are provided and the planning of that provision takes place—

(a) after consultation—

(i) among all the public bodies (including the local authority) responsible for providing those services; and

(ii) with such community bodies and other bodies or persons as is appropriate; and

(b) after and by way of such co-operation among those bodies and persons as is appropriate.

(2) It is the duty of a local authority to—

(a) invite; and

(b) take suitable action to encourage,

all other public bodies the functions of which are exercisable within the area of the local authority and such community bodies as the local authority thinks fit to participate appropriately in community planning.
Where it appears to two or more local authorities to be in the interests of persons within their respective areas that any public service provided in both or all those areas be provided as if those areas were combined, those authorities may perform their duty under this section together and in such a case the references in this section to the area of a local authority are to be taken, in relation to each of those authorities, as references to those areas as if combined.

In this section—

“community bodies”, in relation to a local authority, are bodies or other groupings, whether or not formally constituted, established for purposes which consist of or include that of promoting or improving the interests of any communities (howsoever described) resident or otherwise present in the area of the local authority; and

“other public bodies” means—

(a) public authorities or bodies;

(b) bodies which, not being public bodies, have functions of a public nature or engage in activities of that nature;

(c) persons or office-holders who have such functions or engage in such activities,

but does not include any of the bodies referred to in section 17(1) below.

17 Community planning: further provision

(1) It is the duty of—

(a) a Health Board;

(b) a joint police board for the purposes of the Police (Scotland) Act 1967 (c.77);

(c) a joint board for the purposes of the Fire Services Act 1947 (c.41);

(d) the chief constable of a police force;

(e) Scottish Enterprise;

(f) Highlands and Islands Enterprise;

(g) Strathclyde Passenger Transport Authority,

to participate in community planning.

(2) The Scottish Ministers may, by order, modify subsection (1) above by adding a reference to any eligible body or deleting the reference to any body, person or office-holder.

(3) In subsection (2) above, an “eligible body” is—

(a) a public authority or body;

(b) a body which, not being a public body, has functions of a public nature or engages in activities of that nature; or

(c) a person or office-holder who has such functions or engages in such activities.

(4) An order under subsection (2) above adding a reference may, as respects the body referred to—
(a) specify the area or areas in respect of which the duty imposed by subsection (1) above is to be performed;
(b) modify that duty.

(5) The Scottish Ministers shall, before exercising the power in subsection (4) above, consult—
(a) the body to be referred to; and
(b) each local authority in the area of which the body provides public services.

(6) An order under this section shall be made by statutory instrument, but not unless a draft of the instrument has been laid before and approved by resolution of the Scottish Parliament.

18 Reports and information

(1) A local authority shall publish from time to time reports on how it has implemented its duties under section 16 above, on what has been done by way of community planning in its area and on what action has been taken to comply with section 32 below in the course of community planning.

(2) Subject to subsection (3) below, it is for the local authority to determine the form, content and frequency of and time limits for reports made under subsection (1) above, to whom they are to be given and by what means they are to be published.

(3) The Scottish Ministers may, by regulations, make provision governing any of the matters set out in subsection (2) above.

(4) Such regulations shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.

(5) Before making such regulations, the Scottish Ministers shall consult such associations of local authorities and such other persons as they think fit.

(6) A local authority shall, on being so required by the Scottish Ministers, provide them with reports or other information of such kind as they specify in the requirement, being reports or information about the matters referred to in subsection (1) above.

(7) In section 1(1) (power of Accounts Commission to direct publication of information about local authorities’ standards of performance) of the Local Government Act 1992 (c.19)—
(a) after “opinion” there is inserted “—
(a)”;
(b) paragraphs (a) and (b) become respectively sub-paragraphs (i) and (ii);
(c) at the end there is inserted—
“(b) facilitate the drawing of conclusions about the discharge of those bodies’ functions under Part 2 (community planning) of the Local Government in Scotland Act 2002 (asp 00).”.

19 Guidance

(1) Every authority, body, office-holder or other person initiating, maintaining, facilitating or participating in community planning shall, in doing so, have regard to any guidance provided by the Scottish Ministers about participation in community planning.
(2) Before providing any such guidance, the Scottish Ministers shall consult such persons as they think fit.

PART 3
EXTENSION OF CONTROLLER OF AUDIT’S FUNCTIONS

20 Extension of Controller of Audit’s reporting functions to best value and community planning: amendment of section 102 of 1973 Act

For subsections (1) and (2) of section 102 (reports by Controller of Audit) of the 1973 Act there is substituted—

“(1) The Controller of Audit may and, if so required by the Commission, shall make reports to the Commission with respect to—

(a) the accounts of local authorities audited under this Part of this Act;
(b) any matters arising from the accounts of any of those authorities being matters that the Controller considers should be considered by the local authority or brought to the attention of the public;
(c) the performance by a local authority of its duties under sections 1 (best value) and 16 (community planning) of the Local Government in Scotland Act 2002 (asp 00).

(2) The Controller of Audit shall send a copy of a report made under subsection (1) above to—

(a) any local authority named in the report; and
(b) any other person the Controller thinks fit.”.

PART 4
POWER TO ADVANCE WELL-BEING

21 Power to advance well-being

(1) A local authority has power to do anything which it considers is likely to promote or improve the well-being of—

(a) its area and persons within that area; or
(b) either of those.

(2) The power under subsection (1) above includes power to—

(a) incur expenditure,
(b) give financial assistance to any person,
(c) enter into arrangements or agreements with any person,
(d) co-operate with, or facilitate or co-ordinate the activities of, any person,
(e) exercise on behalf of any person any functions of that person, and
(f) provide staff, goods, services or accommodation to any person.

(3) The power under subsection (1) above may be exercised in relation to, or for the benefit of—
(a) the whole or any part of the area of the local authority;
(b) all or some of the persons within that area.

(4) The power under subsection (1) above includes power to do anything—
(a) in relation to, or for the benefit of, any persons or place outwith the area of the
local authority; or
(b) in any such place,
if the authority considers that doing so is likely to achieve the purpose set out in that
subsection.

(5) The Scottish Ministers may, by order, extend the meaning of “well-being” for the
purposes of this section.

(6) Such an order shall be made by statutory instrument but not unless a draft of it has been
laid before and approved by resolution of the Scottish Parliament.

(7) Before laying such a statutory instrument, the Scottish Ministers shall consult such
associations of local authorities as they think fit.

22 Guidance on exercise of power under section 21

(1) Before exercising the power under section 21 above, a local authority shall have regard
to any guidance provided by the Scottish Ministers about the exercise of the power.

(2) Before providing any such guidance, the Scottish Ministers shall consult such
associations of local authorities and other persons as they think fit.

23 Limits on power under section 21

(1) The power under section 21 above does not enable a local authority to do anything
which it is, by virtue of a limiting provision, unable to do.

(2) In subsection (1) above, a “limiting provision” is one which—
(a) prohibits or prevents the local authority from doing anything or limits its powers
in that respect; and
(b) is expressed in an enactment (whenever passed or made).

(3) The absence from any enactment of provision conferring any power does not of itself
make that enactment a limiting provision.

(4) The power under section 21 above shall not be exercised in a way which unreasonably
duplicates anything which may or must be done in pursuance of a function, under any
enactment (whenever passed or made), of a person other than the local authority.

(5) The power under section 21 above does not enable a local authority to raise money by
levying or imposing any form of tax or charge, by borrowing or otherwise.

(6) Nothing in subsection (5) above prevents a local authority from—
(a) setting and determining amounts of council tax; or
(b) imposing reasonable charges for defraying the costs incurred by the local
authority in supplying goods or providing services.

(7) A local authority shall not, without the prior consent of the Scottish Ministers, do
anything under section 21 above outside the United Kingdom for the purpose of
promoting or improving the economic development of its area.
(8) Nothing in section 21 above affects section 92(5) of the Housing (Scotland) Act 2001 (asp 10) (by which it is provided that certain assistance, including financial assistance, provided by a local authority for certain housing purposes requires the consent of the Scottish Ministers).

24 Excess of power: preliminary notice

(1) If it appears to the Scottish Ministers—
   (a) that a local authority has significantly exceeded its power under section 21 above; and
   (b) that giving the local authority an enforcement direction is justified,
   they may serve a preliminary notice on the authority.

(2) A preliminary notice is a written notice which—
   (a) informs the authority of the apparent excess of power; and
   (b) requires the authority to submit to the Scottish Ministers, within such time as is specified in the notice, a written response which—
      (i) states that it has not significantly exceeded the power in the respects described in the notice and justifies the statement; or
      (ii) states it has so exceeded the power but gives reasons why they should not give a direction under subsection (3) below.

(3) Where, following the service of a preliminary notice and the expiry of the time specified in it under subsection (2)(b) above, it still appears to the Scottish Ministers that the local authority is significantly exceeding the power and that action by them under this section is justified, they may give the authority an enforcement direction.

25 Excess of power: enforcement

(1) An enforcement direction is a direction by the Scottish Ministers requiring the local authority to which it is given to take such action as is specified in the direction being action calculated to remedy or prevent the recurrence of its significant excess of power.

(2) An enforcement direction may place such conditions as the Scottish Ministers may specify in it upon the carrying out of such functions of the local authority as are so specified.

(3) The action referred to in subsection (1) above may include rectification of accounts.

(4) The Scottish Ministers may vary an enforcement direction by giving a further such direction.

(5) A further such direction need not proceed upon a further preliminary notice under section 24 above.

(6) An enforcement direction may be revoked by the Scottish Ministers.

(7) It is the duty of the local authority to which an enforcement direction is given to comply with it.
PART 5
MISCELLANEOUS

26 Remote participation in and calling of local authority meetings

(1) The meetings of a local authority and its committees, including joint committees, and sub-committees thereof may (as well as being conducted in the way in which they have been conducted before the commencement of this section, that is to say, by all members being present together in a pre-determined place) be conducted in any other way in which each member is enabled to participate although not present with others in such a place.

(2) A meeting shall be conducted by virtue of subsection (1) above, however, only on the direction of the convener, whom failing, the deputy convener of the authority.

(3) Schedule 7 (meetings and proceedings of local authorities) to the 1973 Act has effect in relation to meetings so conducted as if—

(a) paragraph 1(3) (place of meetings) and the reference in paragraph 2(1)(a) to the place of an intended meeting were omitted; and

(b) the references in paragraphs 3 to 7 and 10 to the presence of members were references to their participation in a meeting so conducted.

(4) In paragraph 2 of that Schedule, in each of sub-paragraphs (1)(b) and (2)(b), the words “by post” are repealed.

27 Travel concessions

(1) In section 93(7) of the Transport Act 1985 (c.67) (persons eligible for travel concessions), for paragraph (a) there is substituted—

“(a) persons who have attained the age of 60 years;”.

(2) In section 68 of the Transport (Scotland) Act 2001 (asp 2) (travel concession schemes), in subsection (7), for paragraph (a) of the definition of “eligible person” there is substituted—

“(a) has attained the age of 60 years;”.

(3) The Scottish Ministers may by order provide that on and after 6th April 2010 for the references to the age of 60 years in the paragraphs substituted by subsections (1) and (2) above there are substituted references to—

(a) in the case of a woman, her pensionable age;

(b) in the case of a man, the pensionable age of a woman born on the same day, “pensionable age” having the meaning given by the rules in paragraph 1 of Schedule 4 to the Pensions Act 1995 (c.26).

(4) An order under subsection (3) above shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.

28 Parliamentary procedure for regulations about vehicles used as taxis and private hire cars

In section 20 (regulations about, among other things, taxis and private hire cars) of the Civic Government (Scotland) Act 1982 (c.45)—
(a) in subsection (2), the words “made by statutory instrument” are repealed; and
(b) in subsection (3), for “subsection (1) above” there is substituted “this section”.

29 Suspension of requirement to advertise principal teacher posts

(1) The requirement imposed on an education authority by section 87A of the Education (Scotland) Act 1980 (c.44) to advertise a vacant post of principal teacher is, for the period specified in subsection (2) below, suspended.

(2) That period is the period of one year (or such longer period as the Scottish Ministers may by order substitute for that period) beginning with the coming into force of this section.

(3) An order under subsection (2) above shall be made by statutory instrument.

30 Qualification of and assistance for Accounts Commission auditors

(1) In section 97 of the 1973 Act, in subsection (7) (qualification of auditors appointed by Accounts Commission), for paragraph (b) there is substituted—

“(b) he is a member of a body of accountants established in the United Kingdom or another EEA State.”.

(2) After that subsection there is inserted—

“(7A) In subsection (7) above, “EEA State” means any State which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992, as adjusted by the Protocol signed at Brussels on 17th March 1993.”.

(3) Auditors appointed under section 97 of the 1973 Act by the Accounts Commission (whether or not officers of the Commission) may be assisted by having such of their functions as may be specified in arrangements approved by the Commission carried out by other persons so specified or so referred to.

(4) Such arrangements may apply generally or to a particular case or cases.

PART 6

GENERAL

31 Power to modify enactments

(1) The Scottish Ministers may, by order, amend, repeal, revoke or disapply any enactment to which this section applies.

(2) This section applies to—

(a) any enactment which the Scottish Ministers consider prevents local authorities from discharging their duty under section 1(1), 15(1) or 16(1) above or hinders them in that discharge;

(b) any enactment which the Scottish Ministers consider prevents any participant in community planning from implementing a duty or exercising a power under sections 16 and 17 above or hinders a participant in that implementation or exercise;
(c) any enactment which the Scottish Ministers consider prevents local authorities from exercising their power under section 21(1) above.

(3) The power under subsection (1) above may be exercised in relation to—

(a) all authorities, bodies or other persons as respects which and whom it may be exercised;
(b) any class or classes of such authorities, bodies or persons; or
(c) a particular such authority, body or person.

(4) The power under subsection (1) above includes power to amend or disapply an enactment for a specified period.

(5) An order under this section shall be made by statutory instrument.

(6) No such order shall be made unless the statutory instrument has been laid in draft before and approved by resolution of the Scottish Parliament.

32 Equal opportunities

(1) The Scottish Ministers, local authorities, the authorities, bodies, office holders and other persons mentioned in section 17(1) of this Act and any other person discharging a function under this Act shall discharge those functions in a manner which encourages equal opportunities and, in particular, the observance of the equal opportunity requirements.

(2) The duty imposed by subsection (1) above on a local authority is, in relation to its functions under section 1 above, additional to that set out in subsection (1) of that section.

(3) In subsection (1) above, “equal opportunities” and “equal opportunity requirements” have the same meanings as in Section L2 of Part II of Schedule 5 to the Scotland Act 1998 (c.46).

33 Repeals and consequential amendments

(1) The following enactments are repealed—

(a) in section 83 (general power of local authorities to incur expenditure) of the 1973 Act, subsections (1), (2), (2C), (2D) and (4) to (7) and, in subsection (3), the words “subject as aforesaid”;
(b) section 122A (duty of local authorities to use resources efficiently) of that Act;
(c) section 171A (promotion by local authorities of economic development of its area) of that Act;
(d) Part III (direct labour organisations) of the Local Government, Planning and Land Act 1980 (c.65);
(e) Part I (competition in certain local authority activities) and section 32 (direct labour organisations) of and Schedule 6 to the Local Government Act 1988 (c.9);
(f) section 31 (National Code of Local Government Conduct) of the Local Government and Housing Act 1989 (c.42);
(g) sections 1A (permitted methods of publishing information about performance) and 8 to 11 (competition and competitive tendering) of and Schedule 1 to the Local Government Act 1992 (c.19).
The Town and Country Planning (Scotland) Act 1997 (c.8) is amended as follows.

In subsection (3) of section 188, for the words “sections 171A and” there is substituted “section”.

In subsection (8) of section 189, for the words “sections 171A and” there is substituted “section”.

Definitions

In this Act—

(a) “local authority” means—

(i) in Part 1, any of the following: a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39), a joint police board for the purposes of the Police (Scotland) Act 1967 (c.77), a joint board for the purposes of the Fire Services Act 1947 (c.41), a joint board for the purposes of the Valuation and Rating (Scotland) Act 1956 (c.60) and the Strathclyde Passenger Transport Authority;

(ii) in Parts 2, 4 and 5, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39);

(iii) in each of those provisions of this Part which refer to provisions of other Parts, the same meaning as it has in those respective provisions of those other Parts;

(b) the “1973 Act” means the Local Government (Scotland) Act 1973 (c.65).

Short title and commencement

(1) This Act may be cited as the Local Government in Scotland Act 2002.

(2) This Act (except this section) comes into force on such day as the Scottish Ministers may by order made by statutory instrument appoint; and different days may be so appointed for different purposes.

(3) Such an order may include such transitional, transitory or saving provision in connection with the coming into force of the provisions brought into force as the Scottish Ministers think fit.
Local Government in Scotland Bill
[AS INTRODUCED]

An Act of the Scottish Parliament to provide anew about the way in which local authorities discharge their functions and about the local provision of certain public services; to give local authorities power to do things which they consider will advance well-being; to make some minor, miscellaneous amendments of certain provisions of law about local authorities’ meetings and of other provisions connected with the functions of local authorities; and for connected purposes.

Introduced by: Mr Andy Kerr
On: 16 May 2002
Supported by: Peter Peacock
Bill type: Executive Bill