

## **SEWEL MEMORANDUM LOCAL GOVERNMENT BILL**

**Motion** “That the Parliament endorses the principle of including in the Local Government Bill powers for the Scottish Ministers to issue directions and guidance to Scottish local authorities in relation to staff transfer matters: and agrees that the relevant provisions to confer executive functions on the Scottish Ministers in relation to these matters should be considered by the UK Parliament.”

### **Purpose**

1. To provide details of the Local Government Bill and to highlight those provisions which will extend the executive powers of the Scottish Ministers and which the Scottish Parliament is invited to agree should be considered by the UK Parliament.

### **The Bill: background and contents**

2. The Local Government Bill, which was introduced in the House of Commons on 25 November 2002, is the legislation which has emerged from consultation on the Green Paper *Modernising Local Government Finance*; the White Paper *Strong local leadership- Quality public services* published in December 2001; and a draft Bill published in June 2002.

3. The majority of the Bill is devoted to a reform of local government finance in England and Wales, including provisions which: abolish credit approvals and replace them with a prudential system; create business improvement districts; lower business rates for small businesses; provide for council tax revaluation; strengthen local financial management and simplify the housing finance system. It also includes a small number of non-financial White Paper commitments.

4. The Bill is in 8 Parts as follows:

- Part 1 - capital finance and accounts
- Part 2 - financial administration
- Part 3 – grants
- Part 4 - Business Improvement Districts
- Part 5 - Non domestic rates
- Part 6 - Council tax
- Part 7 - Housing finance
- Part 8 - miscellaneous and general provisions

5. The content of the various parts is explained in more detail at Annex A.

## **Matters within devolved competence**

6. Insofar as the provisions of the Local Government Bill relate to reforms to local government in England and Wales, they are outwith the competence of the Scottish Parliament. However it is proposed that two provisions in the Bill are to be amended to confer functions on the Scottish Ministers in relation to Scotland. They provide for the issuing of directions and guidance by Ministers to local authorities about how they should deal with staff transfer issues (employment or pensions) when contracting with other persons for the provision of services or in circumstances where a previously contracted-out service is brought back into the public sector upon termination of the contract. The provisions are explained in more detail in paragraphs 12 - 15 below.

7. Giving directions and guidance to local authorities about matters relating to their performance is in general a devolved issue. But it was concluded during passage of the Local Government in Scotland Bill that it was outwith the competence of the Scottish Parliament to confer such functions upon Scottish Ministers. It was concluded that the effect of both provisions is likely to be the creation of enforceable rights in relation to employment and pensions and given the reservations in this area what was needed was, on balance, reserved under H1 (employment and industrial relations) and F3 (occupational and personal pensions) of Part II of Schedule 5 of the Scotland Act 1998.

8. In consequence the UK Cabinet agreed that the Bill should be amended in January 2003 to alter the executive competence of the Scottish Ministers by conferring powers upon them to issue directions and guidance to Scottish local authorities in relation to staff transfer issues.

9. Under the Sewel Convention, the consent of the Scottish Parliament is required to any provisions in a UK Bill which confer executive functions on the Scottish Ministers, even if the subject matter of the provision relates to reserved matters. This Bill will ensure that Scottish Ministers can fulfil the full Ministerial role envisaged in the Bill in relation to the issue of directions and guidance to Scottish local authorities on staff transfer issues.

10. It is intended that these powers will be used to make statutory within Scottish local government the provision in the Cabinet Office Statement on Staff Transfers in the Public Sector and the Annex to it *A Fair Deal for Staff Pensions*. These are available on the Cabinet Office website at: [www.cabinet-office.gov.uk/civilservice/2000/tupe/stafftransfers.pdf](http://www.cabinet-office.gov.uk/civilservice/2000/tupe/stafftransfers.pdf).

11. It is also intended to use the direction making powers to ensure that contracting exercises are conducted on the basis that the Transfer of Undertakings (Protection of Employment) Regulations 1981 (SI 1981/1794) as amended ('TUPE') will apply, unless there are exceptional circumstances, and that transferees will be offered either retention of the Local Government Pension Scheme or an acceptable alternative.

### **Clause 101: Staff transfer matters: general**

12. The effect of the proposed amendment will be to allow the Scottish Ministers to issue directions to require Scottish local authorities, in contracting with other persons for the provision of services or in circumstances where a contracted-out service is brought back into the public sector upon termination of a contract, to deal with staff transfer matters in accordance with directions. Authorities will also be required to have regard to guidance on staff matters issued by the Scottish Ministers.

13. The duty of best value as set out in the Local Government in Scotland Bill (as passed by the Scottish Parliament on 8 January 2003) will be subordinate to this requirement. Directions or guidance made under the power may relate to all local authorities or to particular descriptions of local authority. Local authority is defined as a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39); the Strathclyde Passenger Transport Authority; or any other body to which Part I of the Local Government in Scotland Bill (best value and accountability) will apply.

**Clause 102: Staff transfer matters: pensions**

14. The effect of the proposed amendment will be that the Scottish Ministers shall exercise their powers under clause 101 to give directions so as to ensure that Scottish local authorities, in contracting for the provision of services, secure specified pension benefits for employees transferring from the authority under TUPE, or who are subsequently transferred under TUPE in a subsequent change in contractor, and likewise ensure that the contractual terms for securing of pension protection for transferring employee are enforceable by the employee.

**Scottish Executive  
January 2003**

## **Local Government Bill Contents**

### Part 1: Capital Finance and Accounts

"Credit approvals" - the up-front Government consents which restrict local authority borrowing will be scrapped. Authorities will be free to borrow for capital investment without consent - if they can afford to service the debt without Government support. Authorities will be free to use their revenues to finance borrowing, giving them greater autonomy and responsibility. The system will be simple and transparent, relying on modern accounting concepts, plus professional and self-regulation. The new system will apply to housing as well as general fund capital. New provisions for receipts will be used to deliver the pooling system, which will replace housing set-aside, and extend to all authorities, not just those with debt.

### Part 2: Financial Administration

New duties and powers will reinforce good practice in budgeting for adequate reserves. Councillors will be required to take a role in budget monitoring. The new powers and duties on reserves are complementary to the new freedoms being allowed to councils.

### Part 3: Grants

Includes:

- A power to provide flexibility for capital or revenue support to local authorities.
- Grant to be paid towards the cost of best value duties carried out by 'best value' parishes in England, similar provision for Wales for community councils subject to best value duties.
- A power to enable grant to be paid to best value authorities in relation to application for beacon status and the reward of beacon status.
- A power to enable grant emergency financial assistance to combined fire authorities.
- Provisions to facilitate the transfer of council housing to registered social landlords, in transfers where the net capital receipt would be insufficient to repay the local authority's housing attributable debt.
- Provision to separate the Local Government Finance Reports in Wales.

### Part 4: Business Improvement Districts

Will allow authorities and businesses to work together to put in place local projects to improve their area. Projects could cover a wide variety of issues including improvements to the quality of the local environment, the street environment, or parks and open spaces.

### Part 5: Non-Domestic Rates

Business rates revaluations will continue at the existing five yearly intervals but on advanced timetable. Small business relief will benefit properties with rateable values of under £8,000. Transitional relief will be permanent feature of rating system and self-financing. Extend agricultural exemption to cover machinery rings and share and contract farming. Amend the existing exemption for places of worship so that a certificate is no longer required as proof of

entitlement to the exemption. Change the rules on hardship relief to allow central Government to make in-year increases to contribution to cost of discretionary rate relief given by certain authorities.

#### Part 6: Council Tax

Will keep council tax fair through a fixed 10-year cycle of revaluations. It will be made clear that additional bands can be created without new primary legislation. Combined Fire Authorities will be made major precepting authorities. The council tax benefit subsidy limitation scheme will be abolished. Authorities will have greater freedom on the discounts and exemptions from council tax that they grant, notably to reduce the discount on second homes.

#### Part 7: Housing Finance

Aim of provisions is to turn the Housing Revenue Account (HRA) into a pure landlord account, thereby (in England) completing the transition to resource accounting in the HRA.

#### Part 8: Miscellaneous and General

##### *Charging and trading*

Best value authorities in England and Wales will be given a general power to charge for discretionary services. The Bill provides wide powers for all authorities to trade where there is strong performance on delivery and where this helps achieve best value in the delivery of public services.

##### *Performance Categories*

New clauses provide the mechanism for applying freedoms (that require legislative change) to councils.

##### *Contracting-Out*

To make statutory within local government provisions in the *Cabinet Office Statement of Practice on Staff transfers in the Public Sector*, and the annex to it *A Fair Deal for Staff Pensions*.

##### *2004 elections*

Power to move the date of local and Greater London Authority elections in 2004 so that they can be held on the same day as the European Parliamentary general election.

##### *Valuation Tribunals*

An executive Non Departmental Public Body will be established to provide administrative support for the valuation tribunal service.

##### *Audit Commission*

Provision to ensure that authorities respond in a timely way to auditors' public interest reports.

*Other*

The Bill also allows for a number of additional measures, namely:

**Standards Board:** giving the Standards Board the ability to delegate functions.

**Paid off time for councillors:** to clarify that the amount of salary paid to employees relating to time they take off work to undertake work as local councillors should not count as a donation.

**Overview and Scrutiny Committees:** local authorities will be given the power to grant voting rights to members of the committees who are not members of the authority.

**Local Polls:** provision creating an express power, removing doubt about the freedom of local authorities to hold advisory polls.

**Section 137(4) of the Local Government Act 1972:** provides for the automatic uprating in line with inflation of the ceiling on 'section 137' expenditure for English parish and town councils.

**Use of fixed penalties paid for litter and dog-fouling offences:** allow local authorities to retain any sums they receive from fixed penalties for leaving litter and dog faeces.