



Local Government (Scotland) Act 1973

1973 CHAPTER 65

PART XII

MISCELLANEOUS, GENERAL AND TRANSITIONAL

Miscellaneous

209 Removal or relaxation of controls affecting certain local authority functions

- (1) For the purpose of removing or relaxing controls which affect the exercise by local authorities of certain functions, including limits imposed on the amount of the fees which may be charged by local authorities in connection with the issue of licences and the exercise of other functions, the enactments specified in Schedule 25 to this Act shall have effect subject to the amendments set out in that Schedule.
- (2) Without prejudice to subsection (1) above, the Secretary of State may by order made by statutory instrument make provision for the removal or relaxation of any control, including any such limit as is referred to in subsection (1) above, which affects the exercise of any function by a local authority and which is conferred by or under any enactment on a Minister of the Crown or a body constituted by or under any enactment.
- (3) An order made under this section may contain such incidental or consequential provisions as appear to the Secretary of State to be appropriate, including provisions amending or repealing or revoking, with or without savings, any enactment passed before this Act and any instrument made under any such enactment.
- (4) A statutory instrument containing an order under this section shall be of no effect unless approved by a resolution of each House of Parliament.
- (5) In this section "local authority" includes a Passenger Transport Executive.

210 Power to direct inquiries

- (1) Where any Minister is authorised by this Act to determine any difference, to make or confirm any order, to frame any scheme, or to give any consent, confirmation,

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sanction or approval to any matter, or otherwise to act under this Act or under any other enactment, or where the Secretary of State is authorised to hold an inquiry, either under this Act or under any other enactment relating to the functions of a local authority, he may cause a local inquiry to be held.

- (2) Except as otherwise provided in any enactment, the Minister may appoint an officer of his Department or any other person to conduct the inquiry and to report thereon to him.
- (3) The person appointed to hold the inquiry shall cause notice of the time and place of the inquiry to be given to the bodies and persons appearing to him to be interested.
- (4) For the purpose of any such local inquiry, the person appointed to hold the inquiry may by notice in writing require any person to attend, at a time and place stated in the notice, to give evidence or to produce any books or other documents in his custody or under his control which relate to any matter in question at the inquiry, and may take evidence on oath, and for that purpose administer oaths:

Provided that—

- (a) no person shall be required, in obedience to such a notice, to attend to give evidence or to produce any such books or other documents, unless the necessary expenses of his attendance are paid or tendered to him ; and
 - (b) nothing in this subsection shall empower the person holding the inquiry to require any person to produce any book or document or to answer any question which he would be entitled on the ground of privilege or confidentiality, to refuse to produce or to answer if the inquiry were a proceeding in a court of law.
- (5) Any person who refuses or wilfully neglects to attend in obedience to a notice under this section to give evidence or who wilfully alters, suppresses, conceals, destroys or refuses to produce any book or other document which he is required or is liable to be required to produce for the purposes of this section shall be liable on summary conviction to a fine not exceeding £20 or to imprisonment for a term not exceeding three months, or to both.
 - (6) The Minister causing the inquiry to be held may, if he thinks fit, pay such expenses of witnesses and such expenses of or concerning the production of any books or other documents as to him seems reasonable, and such expenses shall be deemed to be part of the expenses of the inquiry.
 - (7) The expenses incurred by a Minister in relation to any such inquiry (including such reasonable sum as he may determine for the services of any officer of a Government Department engaged in the inquiry) shall, unless he is of opinion having regard to the object and result of the inquiry that the expenses should be defrayed in whole or in part by him, be paid by such local authority or party to the inquiry as he may direct, and the Minister may certify the amount of the expenses so incurred, and any sum so certified and directed by him to be paid to him by any authority or person shall be a debt due by that authority or person to the Crown and shall be recoverable accordingly.
 - (8) The Minister causing an inquiry to be held may make an award as to the expenses of the parties at the inquiry, and as to the parties by whom such expenses shall be paid.
 - (9) This section shall not apply in the case of a local inquiry held under any enactment where the enactment contains provisions with regard to such inquiries.

211 Provision for default of local authority

- (1) If a complaint is made to the Secretary of State or any appropriate Minister that a local authority have failed to do what is required of them by or under this Act or any other enactment or the Secretary of State or that Minister is of opinion that an investigation should be made as to whether a local authority have so failed, he may cause a local inquiry to be held into the matter.
- (2) If after such a local inquiry the Secretary of State or appropriate Minister is satisfied that there has been such a failure on the part of the authority in question, he may make an order declaring the authority to be in default and directing them for the purpose of remedying the default to take such steps and within such time or times as may be specified in the order.
- (3) If the authority declared to be in default by such an order fail to comply with any requirement thereof within the time limited thereby for compliance with that requirement, the Court of Session may, on the application of the Lord Advocate on behalf of the Secretary of State or appropriate Minister, order specific performance of the functions in respect of which there has been default, and do otherwise as to the court appears to be just.
- (4) Nothing in this section shall affect the provisions of any other enactment relating to the enforcement of a statutory duty whether under that enactment or otherwise.

212 Limitation of liability of certain owners

Where a local authority claim to recover any sum in respect of rates or otherwise under or in pursuance of any provision of this Act from a person as being the owner of premises and that person proves that he—

- (a) is receiving the rent merely as trustee, tutor, curator, factor or agent for some other person; and
- (b) has not, and since the date of the service on him of the demand for payment has not had, in his hands on behalf of that other person sufficient money to discharge the whole demand of the authority,

his liability should be limited to the total amount of the money which he has or has had in his hands as aforesaid.

213 Tweed Fisheries Commissioners

- (1) On 16th May 1975 each person holding office as a representative commissioner under the Tweed Fisheries Act 1969 shall go out of office.
- (2) The function of appointing representative commissioners under the said Act of 1969 shall be transferred to the district councils of Berwickshire, Roxburgh, Ettrick and Lauderdale and Tweeddale and the Berwick on Tweed District Council.
- (3) The said Act of 1969 shall have effect subject to the amendments set out in Schedule 26 to this Act.

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General

214 Consequential and minor modifications and amendments

- (1) As from 16th May 1975 Part I of Schedule 27 to this Act shall have effect for the purpose of making general adaptations of enactments, being adaptations which are consequential on the foregoing provisions of this Act.
- (2) As from that date the enactments specified in Part II of that Schedule shall have effect subject to the modifications and amendments set out in the said Part II, being modifications and amendments which are consequential on the foregoing provisions of this Act and minor amendments.

215 Consequential and supplementary provisions

- (1) The Secretary of State or any appropriate Minister may at any time, whether before or after 16th May 1975, by order make such incidental, consequential, transitional or supplementary provisions as may appear to him—
 - (a) to be necessary or proper for the general or any particular purposes of this Act or in consequence of any of the provisions thereof or for giving full effect thereto ; or
 - (b) to be necessary or proper in consequence of such of the provisions of any other Act passed in the same session as this Act as apply to any area or authority affected by this Act;

and nothing in any other provision of this Act shall be construed as prejudicing the generality of this subsection.
- (2) An order under this section may in particular make provision, in the case of any body, person, funds or matter affected by this Act, for the transition from the provisions of any enactment to the provisions of this Act, but nothing in that order shall be inconsistent with any provision of this Act.
- (3) Subject to subsection (5) below any of the following things done or treated by virtue of any enactment as having been done by or to or in relation to an existing local authority in connection with the discharge of any of their functions, that is to say—
 - any written agreement or other instrument in writing or any determination or declaration made or treated as made by such an authority,
 - any notice or direction given or treated as given by or to such an authority,
 - any licence, permission, consent, approval, exemption, dispensation or relaxation granted or treated as granted by or to such an authority,
 - any application, proposal or objection made or treated as made by or to such an authority,
 - any condition or requirement imposed or treated as imposed by or on such an authority, or
 - any appeal allowed by or in favour of or against such an authority,

shall, as from 16th May 1975, be treated as having been done by, to or in relation to the new local authority by whom those functions become exercisable on and after that date by or by virtue of this Act, and any such thing shall as from that date have effect as if any reference therein to a specified existing local authority by whom those functions were exercisable before that date were a reference to the new local authority by whom those functions become exercisable.

- (4) If there is any doubt as to the identity of a local authority to whom any particular functions are so transferred, that authority shall be taken to be such authority as may be specified in a direction given by a Minister of the Crown concerned with the discharge of those functions.
- (5) Subsection (3) above is without prejudice to any express provision made by, or by any instrument made under, this Act, but has effect subject to any provision to the contrary so made and in particular may be excluded from applying, either wholly or to any specified extent, in any particular case by an order made by the Secretary of State by statutory instrument.
- (6) Section 25 of this Act shall apply for the purposes of Part I and of this Part of this Act as if any reference to an order under Part II of this Act included a reference to any provision of Part I of this Act or to any provision of any instrument made under the said Part I or this Part of this Act, but any agreement made by virtue of this subsection may only be made by new local authorities and after 16th May 1975.
- (7) In this section, "existing local authority" includes a joint committee, joint board and a water board.
- (8) Any statutory instrument containing an order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

216 Transfer of officers

- (1) An order or regulations under section 24, or an order under section 215, of this Act may contain provisions as to the transfer of any person who is, on such date as may be specified in relation to him in the order or by or under the regulations, the holder of any office or employment and who is affected by any provision of, or of any instrument made under, this Act and shall contain provision for the protection of the interests of such persons.
- (2) In the case of any person who on 15th May 1975 is in the employment of one or more local authorities who are or include an authority which ceases to exist by virtue of Part I of this Act, the Secretary of State shall by order make such provision as is necessary to ensure that, to the extent, if any, to which, by reason only of the said Part I of this Act, that person would apart from the order cease on 16th May 1975 to be in such employment, that person is transferred on 16th May 1975 to the employment of such local authority as may be specified in or determined under the order.
- (3) Any such order or regulations as is or are referred to in subsection (1) or (2) above shall include such provision with respect to any person who is transferred by or under the order or regulations from the employment of one authority to that of another so as to secure that—
 - (a) so long as he continues in the employment of that other authority by virtue of the transfer and until he is served with a statement in writing referring to the order or regulations and specifying new terms and conditions of employment, he enjoys terms and conditions of employment not less favourable than those which he enjoyed immediately before the date of transfer; and
 - (b) the said new terms and conditions are such that—
 - (i) so long as he is engaged in duties reasonably comparable to those in which he was engaged immediately before the date of transfer, the scale of his salary or remuneration, and

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- (ii) the other terms and conditions of his employment,
 are not less favourable than those which he enjoyed immediately before the date of transfer.
- (4) Subsections (2) and (3) above shall apply in relation to any joint committee, joint board, water board or prescribed association of local authorities the constituent members of which include councils falling within subsection (2) above which ceases to exist by virtue of this Act as they apply to a local authority which ceases to exist by virtue of Part I of this Act.
- (5) A statutory instrument containing an order under subsection (2) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

217 Continuity of employment in cases of voluntary transfer

- (1) This section applies to a person if—
- (a) at some time before 16th May 1975, or on that date but otherwise than by virtue of provision made by an order under section 216 above, he enters the employment of a new local authority (in this section referred to as " his new employment"), and
 - (b) had he continued until 16th May 1975 in the employment (in this section referred to as " his previous employment") which he last held before he entered his new employment or (if he did so continue) had he then ceased to be in that employment by reason only of Part I of this Act, provision would have been made by an order under section 216(2) of this Act for his transfer on that date to the employment of a specified local authority.
- (2) Where this section applies to a person, then for the purposes of section 28 of the Industrial Relations Act 1971 (qualifying period for protection from unfair dismissal) and section 1 of the Contracts of Employment Act 1972 (minimum periods of notice) —
- (a) the period of employment in his previous employment shall count as a period of employment in his new employment, and
 - (b) the change of employment shall not break the continuity of the period of employment.

218 Staff commission for Scotland

- (1) The Secretary of State, after consulting with such bodies representative of existing local authorities or of staff employed by such local authorities as appear to him to be concerned, shall, not later than one month after the passing of this Act, establish a staff commission for Scotland for the purpose of—
- (a) considering and keeping under review the arrangements for the recruitment of staff by relevant authorities and for the transfer in consequence of the provisions of this Act or any instrument made under it of staff employed by relevant authorities which cease to exist by virtue of Part I of this Act;
 - (b) considering such staffing problems arising in consequence of, and such other matters relating to staff employed by any body affected by, any provision of, or of any instrument made under, this Act as may be referred to the commission by the Secretary of State ; and
 - (c) advising the Secretary of State on the steps necessary to safeguard the interests of such staff.

- (2) The Secretary of State shall be deemed to have consulted the bodies mentioned in subsection (1) above for the purposes of that subsection if he has consulted before the passing of this Act bodies representative of existing local authorities or of staff employed by them.
- (3) The Secretary of State may give directions to the staff commission as to their procedure and to any relevant authority with respect to the furnishing of any information requested and the implementation of any advice given by the commission and with respect to the payment by a new local authority of any expenses incurred by the commission in doing anything requested by the authority.
- (4) Any expenses incurred by the staff commission under this section and not recovered from a local authority shall be paid by the Secretary of State.
- (5) Schedule 1 to the House of Commons Disqualification Act 1957 (offices disqualifying from membership) shall have effect, in its application to the House of Commons of the Parliament of the United Kingdom, as if in Part II, in the appropriate place in alphabetical order, there were inserted the entry—

“The staff commission for Scotland established under section 218 of the Local Government (Scotland) Act 1973.”
- (6) In this section "relevant authority" means a local authority within the meaning of the 1947 Act or this Act, a joint committee, joint board, river purification board, water board or a Passenger Transport Executive established under section 9(1) of the Transport Act 1968 or an association of local authorities the constituent members of which include any such local authority as aforesaid.

219 Compensation for loss of office

- (1) The Secretary of State shall by regulations provide for the payment by such person as may be prescribed by or determined under the regulations of compensation to or in respect of persons who are, or who but for any such service by them as may be so prescribed would be, the holders of any such office or employment as may be so prescribed and who suffer loss of employment or loss or diminution of emoluments which is attributable to any provision of this Act or of any instrument made under this Act.
- (2) Regulations under this section may—
 - (a) include provision as to the manner in which and the person to whom any claim for compensation is to be made, and for the determination of all questions arising under the regulations,
 - (b) make different provision for different classes of persons and for other different circumstances and make or authorise the Secretary of State to make exceptions and conditions,
 - (c) be framed so as to have effect from a date earlier than the making of the regulations,but so that regulations having effect from a date earlier than the date of their making shall not place any individual in a worse position than he would have been in if the regulations had been so framed as to have effect only from the date of their making.
- (3) Without prejudice to subsection (1) above, regulations under this section may make provision in relation to persons who are or, but for any such service by them as may be prescribed, would be employees of any such association of local authorities

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or of committees of local authorities as may be prescribed and who suffer loss of employment or loss or diminution of emoluments which is attributable to the reorganisation of local government effected by this Act; and, without prejudice to subsection (2) above, regulations under this section making any such provision may provide that any compensation paid under the regulations by the Secretary of State shall be recoverable by him in accordance with the regulations from such association or other body as may be prescribed by or determined under the regulations.

- (4) Any statutory instrument containing regulations under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

220 Provision for early retirement in lieu of compensation for loss of office

- (1) In order to facilitate the early retirement of certain persons who might otherwise suffer such loss of employment or loss or diminution of emoluments as is referred to in section 220 of this Act, any person who—
- (a) is the holder of any such office or is in any such employment as may be prescribed for the purposes of this subsection, and
 - (b) attains or has attained the age of fifty on or before 15 May 1975, and
 - (c) fulfils such other conditions as may be prescribed,
- may by notice given before the prescribed date and in the prescribed manner elect that this section shall, and that section 219 of this Act shall not, apply to him.
- (2) Where any person has made an election under subsection (1) above, then unless, within the period of one month beginning on the day on which the notice of election is given, notice of objection to that election has been given to him by the body under whom he holds office or by whom he is employed, this section shall, and section 219 of this Act shall not, apply to him on his retirement within the prescribed period and before attaining the normal retiring age.
- (3) Subject to subsection (4) below, the Secretary of State shall, by regulations, provide for the payment by such person as may be prescribed by or determined under the regulations to or in respect of a person to whom this section applies of benefits corresponding, as near as may be, to those which would have been paid to or in respect of that person under the relevant superannuation scheme if—
- (a) at the date of his retirement he had attained the normal retiring age; and
 - (b) the actual period of his reckonable service were increased by such period as may be prescribed, being a period not exceeding the period beginning on the date of his retirement and ending on the date on which he would attain the normal retiring age.
- (4) Regulations under subsection (3) above shall be so framed as to secure that the sums which would otherwise be payable under the regulations in accordance with that subsection to or in respect of any person are reduced to take account of any benefits payable to or in respect of him under the relevant superannuation scheme.
- (5) Any sums payable under regulations made under subsection (3) above shall be treated for the purposes of section 73 of the Finance Act 1972 (compensation for loss of office or employment chargeable to tax as a payment made on retirement or removal from office or employment) in like manner as compensation paid under section 219 of this Act.
- (6) In this section—

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" normal retiring age " means—

- (a) in relation to any person to whom an age of compulsory retirement applies by virtue of the relevant superannuation scheme, that age, and
- (b) in relation to any other person the age of sixty-five in the case of a man and sixty in the case of a woman, or, in either case, such other age as may be prescribed;

" reckonable service ", in relation to any person, means service in respect of which benefits are payable under the relevant superannuation scheme ; and

" relevant superannuation scheme ", in relation to any person, means the instrument which is applicable in the case of his office or employment and which makes provision with respect to the pensions, allowances or gratuities which, subject to the fulfilment of certain requirements and conditions, are to be, or may be, paid to or in respect of persons in that office or employment.

- (7) A statutory instrument containing regulations under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

221 Remuneration of employees of existing local authorities

- (1) For the purposes of this section the Secretary of State may designate such body appearing to him to be representative of local authorities as he considers appropriate (in this section referred to as " the advisory body ") to consider any increase made or proposed to be made by an existing local authority in the remuneration of any of their employees.
- (2) For the purpose of enabling them to carry out their functions under this section, the advisory body shall consult and seek information from new and existing local authorities and, if requested to do so by the advisory body, the Secretary of State may give a direction to any such local 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 local authority as may be so specified.
- (3) If it appears to the advisory body that an existing local 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 than that which the advisory body considers appropriate for that employee or class of employees, they shall notify the local authority concerned and recommend to them the rate of remuneration which should be paid to the employee or class of employees concerned.
- (4) If it appears to the advisory body that an existing local authority to whom they have made a recommendation under subsection (3) above are not complying with that recommendation, then, after giving notice in writing to the local 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 persons appearing to him to be representative 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 local 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

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- remuneration at the rate recommended by the advisory body under subsection (3) above and specified in the direction.
- (5) It shall be the duty of any local authority to whom a direction is given under subsection (2) or subsection (4) above to comply with the direction.
- (6) If at any time in the period of three months beginning on 16th May 1975 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 (3) above or, having made such a recommendation before that date, would have referred the matter to the Secretary of State under subsection (4) 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 16th May 1975 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.
- (7) On receiving a report under subsection (6) above the Secretary of State may, after such consultation as is specified in subsection (4) above, by order provide that, for the purposes of the provisions of this Act 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 16th May 1975 or such earlier date as may be specified in the report, remuneration at the rate stated in the report and specified in the order, but no order shall be made under this subsection after the end of October 1975.
- (8) Nothing in this section—
- (a) shall apply to the remuneration payable to teachers by education authorities, or
 - (b) shall empower the Secretary of State to give a direction requiring a local authority to pay any employee, or to make an order deeming any employee to have been receiving remuneration at a rate below that to which he was entitled on 1st April 1973.
- (9) In this section, "existing local authority" includes a joint committee, joint board, river purification board and a water board.

222 Transfer of property

- (1) The Secretary of State shall by order provide that all property vested on 15th May 1975 in one or more existing relevant authorities, other than property which is subject to the provisions of section 128 or 223 of this Act or property mentioned in subsection (2) below, shall on 16th May 1975 be transferred to and vest in such new relevant authority as may be specified in or determined under the order.
- (2) The Secretary of State shall by order provide that all property held as part of the common good by an existing local authority on 15th May 1975 shall on 16th May 1975 be transferred to and vest in such islands or district council as may be specified in or determined under the order, and those councils, other than the district councils of Aberdeen, Dundee, Edinburgh and Glasgow, shall, in administering that property, have regard to the interests of the inhabitants of the area to which the common good formerly related.

- (3) The district councils of Aberdeen, Dundee, Edinburgh and Glasgow shall, in administering the property transferred to them by virtue of subsection (2) above, have regard to the interests of all the inhabitants of their districts.
- (4) An order under this section may contain such incidental, consequential, transitional or supplementary provisions as appear to the Secretary of State to be necessary or expedient for the purposes of the order.
- (5) A statutory instrument containing an order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

223 Property held on trust

- (1) All property held on trust immediately before 16th May 1975 by
 - (a) an existing local authority, or
 - (b) a councillor and a specified officer of an existing local authority,shall on that day be transferred to and vest (subject to the same trust) in the appropriate islands or district council.
- (2) The council 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 16th May 1975 by the persons mentioned in subsection (1) (b) above, the council shall nominate the proper officer as one of the trustees.
- (3) All property held on trust immediately before 16th May 1975 by a specified officer of an existing local authority shall on that day be transferred to and vest (subject to the same trust) in the proper officer of the appropriate islands or district council.
- (4) Where, immediately before 16th May 1975, property is held on trust by the holder of an office, whether as a councillor or a specified officer, connected with an existing local authority or existing local authorities and any other person, the appropriate islands or district council or (where the area to which the trust relates comprises the areas of more than one existing local authority) the appropriate islands or district councils 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 council or councils shall nominate the proper officer as one of the trustees.
- (5) In this section " appropriate islands or district council" means, in relation to an existing local authority, the islands or district council whose area comprises the whole or the greater part of the area of the existing local authority, and " appropriate islands or district councils " shall be construed accordingly.
- (6) This section shall not apply to property which is subject to section 128 of this Act.

224 Property commission for Scotland

- (1) The Secretary of State, after consulting with such bodies representative of existing local authorities as appear to him to be concerned, shall, not later than one month after the passing of this Act, establish a property commission for Scotland for the purpose of—

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- (a) assisting existing relevant authorities to identify property to be transferred to new relevant authorities ;
 - (b) advising the Secretary of State on the general principles on which such property should be transferred;
 - (c) playing such further part in the process of transfer of such property as may be specified in an order made under section 222 of this Act.
- (2) The Secretary of State shall be deemed to have consulted the bodies mentioned in subsection (1) above for the purposes of that subsection if he has consulted those bodies before the passing of this Act.
- (3) The Secretary of State may give directions to the property commission as to their procedure and to any existing or new relevant authority with respect to the furnishing of any information requested and the implementation of any advice given by the commission.
- (4) Any expenses incurred by the property commission under this section shall be paid by the Secretary of State.
- (5) Schedule 1 to the House of Commons Disqualification Act 1957 (offices disqualifying from membership) shall have effect, in its application to the House of Commons of the Parliament of the United Kingdom, as if in Part II, in the appropriate place in alphabetical order, there were inserted the entry—
“*The property commission for Scotland established under section 224 of the Local Government (Scotland) Act 1973.*”
- (6) In this section and in section 222 of this Act—
- (a) " property " means any property, heritable or moveable, other than a security or balance in a fund, and all interests, rights and liabilities in or relating to property ;
 - (b) " relevant authority " means a local authority within the meaning of the 1947 Act or this Act, as the context may require, a joint committee, river purification board or water board or an association of local authorities the constituent members of which include any such local authority as aforesaid.
- (7) In the foregoing provisions of this Part of this Act " water board " means a regional water board or a water development board, or both, as the context may require.

225 Local Acts and instruments

- (1) Subject to subsections (2) and (8) below, any local statutory provision to which this section applies and which is not continued in force by any other provision of this Act shall—
- (a) notwithstanding the changes of administrative areas and local authorities effected by or under 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 16th May 1975 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.

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- (2) Subsection (1) above shall have effect subject to the provisions of—
- (a) this Act, other than Part I of Schedule 27 ;
 - (b) any Act passed after this Act and before 16th May 1975; and
 - (c) any order made under section 215 of this Act or the following provisions of this section.
- (3) Any local statutory provision to which this section applies and which relates to functions exercisable by a 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 16th May 1975 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 16th May 1975 and shall have effect subject to any provision to the contrary made by, or by any instrument made under, 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 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 215 of this Act, the Secretary of State or any appropriate Minister 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 or that Minister 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 authority appearing to the Secretary of State or that Minister 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 215 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 or that Minister to be expedient.

Status: This is the original version (as it was originally enacted).

- (6) All local statutory provisions to which this subsection applies shall cease to have effect at the end of 1979, but—
- (a) the Secretary of State or any appropriate Minister may by order exempt any such provision from the foregoing provision of this subsection ;
 - (b) the Secretary of State may from time to time by order postpone the date on which all local statutory provisions applying to the whole or part of any local government area, so far as they so apply, are to cease to have effect under this subsection.

(7) An instrument containing an order under subsection (5) or (6) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

- (8) Any local statutory provision relating to valuation or the determination, levying, collection or recovery of rates shall cease to have effect:

Provided that this subsection shall not affect the operation of section 19(2) of the Water (Scotland) Act 1949 (domestic water rate payable at reduced rate in certain cases).

- (9) This section applies to any local statutory provision in force immediately before 16th May 1975 and not expressly repealed or revoked by this Act, and subsection (6) above applies to the following 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;

not being a provision relating to a statutory undertaking or a protective provision for the benefit of any person.

- (10) In subsection (9) above " local authority " means—

- (a) a council of a county, county of city, burgh or district;
- (b) any body which immediately after the coming into force of the enactment which constituted the body exercised functions which immediately before 16th May 1975, were exercised by one of the councils referred to in paragraph (a) above ;

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, water or district heating.

226 Existing joint boards

- (1) Subject to the following provisions of this section, where an existing joint board, every member of which is appointed by a local authority, was constituted by or under any enactment for exercising functions for any area, then, notwithstanding the change of areas and authorities effected by Part I of this Act, the board shall continue to exist on and after 16th May 1975 and to exercise for that area the same functions as before that date (to the exclusion of new local authorities).

- (2) Subsection (1) above shall not apply to a joint board constituted for an area which on 16th May 1975 will be wholly within the area of a single new local authority if

the board was constituted for the purpose of exercising functions which on and after that date would (apart from the existence of the board) be exercisable by that local authority, whether or not the board has additional functions which, apart from this section, would not be so exercisable ; and accordingly in any such case—

- (a) the functions of the board shall on 16th May 1975 become functions of that new local authority ; and
 - (b) the joint board shall cease to exist on that date.
- (3) The continuation in existence of any area or body by this section shall not prejudice any power conferred by any enactment to amend or revoke the order constituting the area or body or the power to make provision with respect to the body conferred by section 215 of this Act.
- (4) The following provisions shall have effect for the construction of references to a local statutory provision to which section 225 of this Act applies:—
- (a) any reference to an existing joint board which ceases to exist by virtue of this section, or any reference which is to be construed as such a reference, shall be construed as a reference to the local authority by whom the functions of that board will become exercisable by virtue of this section ;
 - (b) any reference to a united district or other area the existing joint board for which ceases to exist by virtue of subsection (2) above, or any reference which is to be construed as such a reference, shall be construed as a reference to so much of the area of the new local authority by whom the functions formerly exercisable by the existing joint board become exercisable on 16th May 1975 as comprises the area for which the board acted.
- (5) The foregoing provisions of this section shall have effect subject to any provision to the contrary made by, or by any instrument made under, this Act and shall be without prejudice to any express provision so made.

227 Abolition of Dean of Guild Court

On 16th May 1975 all dean of guild courts shall cease to exist, and unless otherwise provided, all powers, duties and responsibilities conferred on a dean of guild or a dean of guild court by or under any enactment shall thereafter be exercised by the authority responsible for building control in the area concerned.

228 Abolition of fiars courts for counties etc.

- (1) The courts for striking the fiars prices for the counties of Scotland shall no longer be held, and accordingly no payment becoming due after the appointed day shall be calculated by reference to fiars prices.
- (2) Subject to the provisions of section 12 of the Conveyancing (Scotland) Act 1924 (abolition and commutation of grain, etc. feuduties) the amount of any periodical payment becoming due after the appointed day which would, if it had become due immediately before that day, have fallen to be ascertained by reference to fiars prices, shall be a sum in money representing the average value of the payment due during the last three years before that day.
- (3) In the event of the parties failing to reach agreement as to the commutation into money of any payment by reference to subsection (2) above, either party may apply to the sheriff for a decree declaring the commuted value in money of the payment.

Status: This is the original version (as it was originally enacted).

- (4) Where any payment, the amount of which falls to be ascertained by reference to subsection (2) above, is exigible from any person by virtue of an interest in land, the title to which may be recorded in the Register of Sasines, any agreement relative thereto and any decree pronounced under subsection (3) above shall, on being duly recorded in the appropriate register, be binding upon all persons having interest.
- (5) Any valuation or question mentioned in subsection (4) of section 75 of the Agricultural Holdings (Scotland) Act 1949, falling to be decided by reference to a date after the appointed day, which would, if it had fallen to be decided by reference to a date immediately before that day, have been decided by reference to fiars prices, shall be decided in such manner as the parties may by agreement determine or, failing such agreement, shall, notwithstanding the provisions of that subsection, be decided by arbitration under that Act.
- (6) In this section " the appointed day" means the day appointed under section 238 of this Act for the coming into operation of this section.

229 The Burgh Police (Scotland) Acts 1892 to 1911

- (1) The Burgh Police (Scotland) Acts 1892 to 1911 shall cease to have effect at the end of 1979, and until that time those Acts shall have effect subject to the amendments set out in Schedule 28 to this Act, to the provisions of this section and of any order made thereunder.
- (2) Subject to subsection (3) below, the said Acts of 1892 to 1911 shall continue to apply in those areas and to those things and persons in which, to which and to whom they at present apply.
- (3) The Secretary of State may by order provide for the extension of any provision of the said Acts of 1892 to 1911 to such areas, things and persons as he may think fit, and, without prejudice to that generality, any such order may—
 - (a) extend the provision throughout a new local government area;
 - (b) provide that the provision shall have effect in such an area to the exclusion of any enactment for corresponding purposes;
 - (c) make such modifications of any such enactment in its application to such an area as will secure that the enactment will operate harmoniously with the said provision in that area;
 - (d) repeal or revoke any such enactment or instrument which appears to the Secretary of State to have become spent, obsolete or unnecessary, or to have been substantially superseded by any such provision ;
 - (e) transfer to any authority appearing to the Secretary of State to be appropriate any function of an existing local authority which is not to become a function of some other authority;
 - (f) make such modifications of the said provision in its application to a new local government area as appear to the Secretary of State to be expedient.
- (4) An instrument containing an order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

230 Committees of existing local authorities

- (1) Existing local authorities may establish, or the Secretary of State may require existing local authorities to establish, a committee in each region, islands area or district to consider any matter which it is expedient should be considered before the election of the council of the authority concerned in order to ensure the effective operation of that council on and after 16th May 1975.
- (2) A committee established under this section 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 agreement, as may be determined by the Secretary of State.
- (3) Any expenses incurred by a committee established under subsection (1) above shall be defrayed by the local authorities by whom the committee was established in such proportions respectively as may be agreed between them or, in default of such agreement, as may be determined by the Secretary of State.

231 Application to sheriff in cases of difficulty

- (1) Where, from failure to observe any of the provisions of this Act or from any other cause, a difficulty arises in carrying into effect any of the provisions of this Act, or where in any case any question arises as to the procedure to be followed, or where any question arises in connection with the election of members of a local authority and no provision is made in this Act for meeting such difficulty or determining such question, it shall be lawful for the local authority or any seven local government electors for the area of the authority or the proper officer of the authority, or in the case of a question relating to an election of members of a local authority for the returning officer at the election, to make application to the sheriff setting forth the circumstances and after such intimation and inquiry as to the sheriff seems proper, the sheriff may give such directions as in his judgment will enable the provisions of this Act to be complied with as nearly as possible or determine the question as the case may be, and may make such order as seems proper to him with reference to the expenses in connection with the application and the persons by whom such expenses are payable.
- (2) Subject to any order made by the sheriff, all expenses incurred in connection with any application under the preceding subsection shall be defrayed as part of the general expenses of the authority.

232 Provisions regarding applications to court

- (1) Where any application to the sheriff under this Act is dealt with in the first instance by a sheriff other than the sheriff principal, it shall be competent to appeal to the sheriff principal against the decision of the sheriff within fourteen days after the date thereof, but subject thereto the decision of the sheriff principal or sheriff shall, except where otherwise specifically provided, be final.
- (2) Where the area of a local authority is situated within more than one sheriffdom, any application to the sheriff under this Act shall be presented to the sheriff principal of the sheriffdoms in which the area of the authority is situated.
- (3) Where any application is presented to two or more sheriff principals under this Act and they are unable to reach a unanimous decision, they shall state a case for the Court of Session and the Court may pronounce any deliverance which it would have been competent for the sheriffs to make.

Status: This is the original version (as it was originally enacted).

233 Orders, rules and regulations

- (1) Any power to make orders, rules or regulations conferred on any Minister by any provision of this Act, other than section 104(1), 211 or 221 shall be exercisable by statutory instrument.
- (2) Any order under this Act may be varied or revoked by a subsequent order made in the like manner and subject to the same provisions.
- (3) An order made by a Minister under this Act may contain such incidental, consequential and supplemental provisions as appear to the Minister by whom the order is made to be necessary or proper for bringing the order into operation and giving full effect thereto.

234 Expenses

There shall be defrayed out of moneys provided by Parliament—

- (a) any expenses incurred by any Minister under this Act; and
- (b) any increase attributable to the provisions of this Act in the sums payable out of moneys so provided under any other enactment.

235 General provisions as to interpretation

- (1) In this Act, except where the context otherwise requires—

" appropriate Minister ", with respect to any matter, means the Minister in charge of any Government Department concerned with that matter; but the validity of any order or regulation purporting to be made by any Minister by virtue of a power conferred on the appropriate Minister by this Act shall not be affected by any question as to whether or not that Minister was the appropriate Minister for the purpose ;

" area ", in relation to a local authority, means a region, islands area or a district as the case may be ;

" college council " and " school council " have the meanings assigned to them by section 125 of this Act;

" education authority ", " educational establishment ", " further education " and " school " have the same meanings as in the Education (Scotland) Act 1962 ;

" education committee " means a committee appointed under section 124 of this Act;

" electoral area ", in relation to a region or islands area, means an electoral division and, in relation to a district, means a ward, within the meaning of section 5 of this Act;

" enactment " includes an order, regulation, rule or other instrument having effect by virtue of an Act;

" existing ", in relation to any authority, means that authority as they existed immediately before the passing of this Act;

" financial year " has the meaning assigned to it by section 96(5) of this Act;

" joint board " means a body corporate, constituted for the purposes of a combination of local authorities under this Act or by or under any other enactment, consisting exclusively of persons appointed by the local authorities;

Status: This is the original version (as it was originally enacted).

" joint committee " means a body, not being a body corporate, constituted for the purpose of a combination of local authorities under this Act or by or under any other enactment, consisting exclusively of persons appointed by the local authorities ;

" land " includes land covered with water and any interest right or servitude in or over land ;

" local authority " means a regional, islands or district council;

" local statutory provision " means a provision of a local Act (including an Act confirming a provisional order) or a provision of a public general Act passed with respect only to the whole or part of an existing local government area or a provision of an instrument made under any such local or public general Act or of an instrument in the nature of a local enactment made under any other Act;

" new ", in relation to any authority, means that authority as established by or under this Act;

" 1947 Act " means the Local Government (Scotland) Act 1947;

" prescribed " means prescribed by regulations made by the Secretary of State;

" rating authority " has the meaning assigned to it by section 109(1) of this Act;

" water authority " has the meaning assigned to it by section 148 of this Act.

- (2) Any reference in this Act to a regional, islands or district council includes a reference to any combination of those councils.
- (3) Any reference in this Act to a proper officer and any reference which by virtue of this Act is to be construed as such a reference shall, in relation to any purpose and any local authority or other body or any area, be construed as a reference to an officer appointed for that purpose by that body or for that area, as the case may be.
- (4) In this Act, except where the context otherwise requires, references to any enactment shall be construed as references to that enactment as amended, extended or applied by or under any other enactment, including any enactment contained in this Act.

236 Savings

- (1) Nothing in this Act shall affect the boundaries of the districts for the supply of electricity of the Scottish Electricity Boards within the meaning of the Electricity Reorganisation (Scotland) Act 1954.
- (2) Nothing in sections 70 to 78 of this Act shall affect any provision relating to the acquisition by agreement or compulsorily, appropriation, letting or disposal of land, the erection of buildings or the execution of works by a local authority contained in any of the following enactments or any instrument made thereunder—
 - (a) The Burial Grounds Acts ;
 - (b) The Military Lands Acts 1892 to 1903 ;
 - (c) The Cremation Act 1902 ;
 - (d) The Housing (Scotland) Acts 1966 to 1973 ;
 - (e) The Water (Scotland) Acts 1946 to 1967 ;
 - (f) The Education (Scotland) Acts 1939 to 1973 ;
 - (g) The Police (Scotland) Act 1967;

Status: This is the original version (as it was originally enacted).

(h) Any local Act.

- (3) Any enabling provision contained in this Act shall be in addition to, and not in derogation of, any powers exercisable by Her Majesty by virtue of her royal prerogative.

237 Repeals

- (1) The enactments specified in Schedule 29 to this Act (which include enactments that were obsolete, spent or unnecessary before the passing of this Act) are hereby repealed to the extent mentioned in the third column of that Schedule.
- (2) Without prejudice to section 38(1) of the Interpretation Act 1889, where this Act repeals any enactment making provision with respect to a particular matter or particular matters and either makes or applies some other enactment making corresponding or different provision with respect to that matter or those matters, then, unless the contrary intention appears and in particular subject to any instrument under section 215, 216, 219 or 225 of this Act references in any enactment other than this Act, or in any instrument made under any enactment other than this Act, to the repealed enactment shall be construed as references to the enactment contained in or applied by this Act which makes the corresponding or different provision.

238 Short title, commencement and extent

- (1) This Act may be cited as the Local Government (Scotland) Act 1973.
- (2) This Act (except this section) shall come into operation on the appointed day, being such day as the Secretary of State may by order appoint, and different days may be appointed under this subsection for different provisions of this Act or for different purposes, or for the purposes of the same provision in relation to different cases.
- (3) This Act, except sections 92, 146(5) and 213 and paragraph 64 of Schedule 17 and Schedule 26 and except in so far as it relates to the amendment of the House of Commons Disqualification Act 1957, extends to Scotland only.