



Local Government (Scotland) Act 1973

1973 CHAPTER 65

PART XI

GENERAL PROVISIONS AS TO LOCAL AUTHORITIES

Legal Proceedings, Notices, etc.

189 Legal proceedings

- (1) Where a local authority consider it expedient for the promotion or protection of the interests of the inhabitants of their area or any part thereof, they may institute, defend or appear in any legal proceedings or represent the inhabitants at any local inquiry held by or on behalf of any Minister or public body under any enactment.
- (2) Any member or officer of a local authority, who is authorised in that behalf by the authority, shall be entitled to institute, defend or appear in proceedings before a court of summary jurisdiction although he is not a practising solicitor.

190 Service of legal proceedings, notices, etc., on local authorities

Any legal proceedings against a local authority shall be deemed to have been duly served on the authority if served on the proper officer of the authority, and any notice, order or other document required or authorised by any enactment or any instrument made under an enactment to be sent, delivered or served to or upon a local authority or to or upon the proper officer or chairman of a local authority, shall be addressed to the local authority or to the proper officer or chairman, as the case may be, and left at, or sent by post in a prepaid letter to, the offices of the local authority.

191 Claims in sequestrations and liquidations

The proper officer of a local authority or any other officer authorised by the authority for the purpose may sign on behalf of the authority any claim in any sequestration, liquidation or other such proceedings in which the authority are entitled to make a

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claim, and may act on behalf of the authority in connection with that claim in all respects.

192 Service of notices, etc., by local authority

- (1) Any documents to which this section applies may be served—
- (a) by being sent by post in a prepaid letter or delivered to or at the residence or place of business of the person to whom it is addressed:

Provided that in the case of a person employed on any ship or vessel it shall be delivered to some person on board thereof and connected therewith; or
 - (b) in the case of an incorporated company or body by being sent by post in a prepaid letter addressed to the secretary or clerk of the company or body at their registered or principal office or by delivering it to him at that office ; or
 - (c) where the notice or other document relates to premises and the owner thereof resides beyond the area of the local authority, by being sent by post in a prepaid letter or delivered to or at the place of business of his known factor or agent or the person drawing the rents of the premises; or
 - (d) where the notice or other document relates to premises and the local authority are unable after reasonable inquiry to ascertain the address of the person upon whom it should be served, by addressing it to him—
 - (i) by name, if his name is known ; or
 - (ii) if his name is not known, by the description of " owner " or " occupier " of the premises (naming them) to which it relates;

and by delivering it to some person on the premises, or if there is no person on the premises to whom it can be delivered, by affixing it or a copy thereof to some conspicuous part of the premises.
- (2) Service of a copy of a document to which this section applies shall be deemed to be service of the principal document.
- (3) Service of any document to which this section applies may be proved by a certificate under the hand of the person who posted or delivered or affixed the same attested by one witness who was present at such posting, delivery or affixing.
- (4) Where any document to which this section applies relates to premises and the local authority are unable after reasonable inquiry to ascertain the name and address of the owner of the premises, then if there is no known factor, agent or person drawing the rents, such document may be addressed to the occupier or any of the occupiers of the premises, and such occupier shall in all respects take burden for the owner, so however that he shall not be liable to make payment under this section of any sum in excess of the sum which he is liable to pay in respect of rent of the premises nor shall he be required to make payment of any sum before the sum in respect of rent is due and payable, and any sum so paid by the occupier shall be deemed to be a payment to account of rent.
- (5) For the purpose of enabling any document to be served on the owner of any premises, the local authority may by notice in writing require the occupier of the premises to state the name and address of the owner thereof, and if the occupier refuses or wilfully neglects to do so, or wilfully misstates the name and address of the owner, he shall, unless in the case of a refusal he shows cause to the satisfaction of the court for his refusal, be liable on summary conviction in respect of each offence to a fine not exceeding £20.

- (6) This section applies to any notice, order or other document which is required or authorised by an enactment (including any enactment in this Act) or any instrument made under an enactment to be served by or on behalf of a local authority, or by an officer of a local authority, not being a document to the service of which the provisions of some enactment other than this section or some instrument made under an enactment are applicable.

193 Authentication of documents

- (1) Any notice, order or other document which a local authority are authorised or required by or under any enactment (including any enactment in this Act) to give, make or issue may be signed on behalf of the authority by the proper officer of the authority, and may be withdrawn by a notice similarly authenticated.
- (2) Any document purporting to bear the signature of the proper officer of the authority shall be deemed, until the contrary is proved, to have been duly given, made or issued by the authority of the local authority. In this subsection the word "signature" includes a facsimile of a signature by whatever process reproduced.
- (3) Where any enactment or instrument made under an enactment makes, in relation to any document or class of documents, provision with respect to the matters dealt with by one of the two foregoing subsections, that subsection shall not apply in relation to that document or class of documents.

194 Execution of deeds by local authority and use of seal

- (1) Save as otherwise provided in this Act, a deed to which a local authority are a party shall be held to be validly executed on behalf of the authority if it is sealed with the common seal of the council and subscribed on behalf of the council by two members of the council and the proper officer of the council, whether attested by witnesses or not, or if it is executed in such other manner as may be provided in a local Act.
- (2) The seal of a council may be affixed to a deed or other document if authority to affix the seal to the deed or other document has been given at a meeting of the council, or has been given otherwise in accordance with standing orders of the council:

Provided that a person entering into any transaction with any such council shall not be bound to inquire whether authority to affix the seal has been given in accordance with the provisions of this subsection, and all deeds executed by such a council if otherwise valid shall have full force and effect notwithstanding that such authority may not have been given.

195 Public notices

Save as otherwise expressly provided, a public notice required to be given by a local authority shall be given—

- (a) by displaying the notice conspicuously at or near the principal entrance to the offices of the authority; and
- (b) by posting the notice in some conspicuous place or places within the area of the authority or by inserting a copy of the notice in a newspaper circulating in the area of the authority; and

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- (c) in such other manner, if any, as appears to the authority to be desirable for giving publicity to the notice.

196 Misnomers, etc., not to affect validity of notices, etc.

No misnomer or inaccurate description of any person or place, omission, mistake or informality in any notice or other document under or for the purposes of this Act shall affect the full operation of the notice or other document if the person or place mentioned is so designated as to be commonly understood, and such omission, mistake or informality is not such as to defeat the object of the notice or other document or cause substantial injustice to any person affected thereby.

197 Inspection and deposit of documents

- (1) The minutes of—
 - (a) the proceedings of a local authority,
 - (b) the proceedings of any committee appointed by a local authority so far as such proceedings relate to any of the authority's functions under the National Assistance Act 1948, the Education (Scotland) Acts 1939 to 1973, the National Health Service (Scotland) Act 1972 or the Town and Country Planning (Scotland) Act 1972, and
 - (c) the proceedings of any joint committee or joint board established for the purpose of performing all or any of the functions of two or more local authorities under any of the Acts mentioned in paragraph (b) above,
 shall be open to the inspection of any local government elector for the area of the local authority or, in the case of a joint committee or joint board, the area of any of the local authorities represented on the joint committee or joint board, at all reasonable hours on payment of a fee not exceeding 10p, and any such local government elector may make a copy thereof or an extract therefrom.
- (2) In any case in which a document of any description is deposited with the proper officer of a local authority, pursuant to the standing orders of either House of Parliament or to any enactment or instrument, the proper officer shall receive and retain the document in the manner and for the purposes directed by the standing orders or enactment or instrument, and shall make such notes or endorsements on, and give such acknowledgements and receipts in respect of, the document as may be so directed.
- (3) Subject to any provisions to the contrary in any other enactment or instrument, a person interested in any such map, plan or other document as is mentioned in subsection (2) above, may, at all reasonable hours, inspect and make copies thereof or abstracts therefrom on payment to the person having custody thereof of a fee not exceeding 10p for every such inspection, and of a further fee not exceeding 10p for every hour during which such inspection continues after the first hour.
- (4) If a person having the custody of any such document—
 - (a) obstructs any person entitled to inspect the document or to make a copy thereof or extract therefrom in inspecting the document or making a copy or extract,
 - (b) refuses to give copies or extracts to any person entitled to obtain copies or extracts,
 he shall be liable on summary conviction to a fine not exceeding £20.
- (5) A local authority may remit any fee chargeable under this section.

198 Photographic copies of documents

- (1) Subject to subsection (3) below, any requirement imposed by any enactment that a local authority shall keep a document of any description shall be satisfied by their keeping a photographic copy of the document.
- (2) Subject to subsection (3) below, any requirement imposed by any enactment that a document of any description in the custody or under the control of a local authority shall be made available for inspection shall be satisfied by their making available for inspection a photographic copy of the document.
- (3) A photographic copy of a document in colour where the colours are relevant to the interpretation of the document shall not suffice for the purposes of this section unless it so distinguishes between the colours as to enable the document to be interpreted.

199 Reports and returns

Every local authority and every joint committee or joint board shall, within such period as the appropriate Minister may require, make to that Minister such reports and returns and give him such information with respect to their functions as the Minister may require, or as may be required by either House of Parliament.

200 Records

- (1) Where records of an existing local authority relate exclusively to property vested in or functions transferred to a new local authority the records shall vest in that new local authority.
- (2) Records of parochial boards and parish councils held by an existing local authority shall vest in the regional or islands council which succeeds that authority.
- (3) All other records held by a county council shall vest in the regional or islands council which succeeds the county council, and all such records held by any other existing local authority shall vest in the islands or district council which succeeds that authority.
- (4) Where the area of an existing local authority is divided among two or more new local authorities, the records shall, subject to the foregoing provisions of this section, vest in the new local authority whose area includes, according to the latest census (not being a sample census), the greater part of the population of the existing local authority.
- (5) Where records relating to property or functions vested in or transferred to a local authority have vested in another local authority that other local authority shall make the records available for consultation by the former authority.
- (6) Any dispute as to the vesting of records shall be referred to and determined by the Secretary of State, whose decision in the matter shall be final.
- (7) A local authority shall make proper arrangements with respect to any records which belong to or are in the custody of the authority or any of their officers, and may dispose of records which they do not consider worthy of preservation.
- (8) A local authority may transmit any of their records to the Keeper of the Records of Scotland for safe custody, and accordingly in section 5(2) of the Public Records (Scotland) Act 1937 (transfer of records to Keeper), for the words from " the town " to " any other " there shall be substituted the word " any ".

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- (9) A regional council may deposit any of their records with a district council within their region, and a district council may deposit any of their records with the regional council within whose region their area is situate or with any other district council within the same region.
- (10) A local authority may permit persons, with or without charge, and subject to such conditions as the authority may determine, to inspect their records and to make or obtain copies thereof.
- (11) In this section—
- (a) " records" includes charters, deeds, minutes, accounts and other documents, and any other records of whatever form which convey information, but does not include records which are the property of the Registrar General of Births, Deaths and Marriages for Scotland ; and
 - (b) "local authority" includes a joint board, joint committee, river purification board and a water board.

Byelaws

201 Byelaws for good rule and government

- (1) A local authority may make byelaws for the good rule and government of the whole or any part of the region, islands area or district, as the case may be, and for the prevention and suppression of nuisances therein.
- (2) The confirming authority in relation to byelaws made under this section shall be the Secretary of State.
- (3) Byelaws shall not be made under this section for any purpose as respects any area if provision for that purpose as respects that area is made by, or is or may be made under, any other enactment.

202 Procedure, etc., for byelaws

- (1) The following provisions of this section shall apply to byelaws to be made by a local authority—
 - (a) under this Act,
 - (b) under any other enactment whenever passed, and whether local or otherwise, conferring on a local authority a power to make byelaws, or
 - (c) under any enactment which incorporates or applies any of the following enactments—
 - (i) section 57 of the Local Government (Scotland) Act 1889;
 - (ii) sections 317 to 323 of the Burgh Police (Scotland) Act 1892;
 - (iii) sections 183 to 187 of the Public Health (Scotland) Act 1897;
 - (iv) sections 301 to 303 of the 1947 Act.
- (2) Unless the enactment under which the byelaws are made specifically provides otherwise, any such byelaws may apply only to a part of the area of a local authority, and different byelaws may apply to different parts of the area.

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- (3) The byelaws shall be authenticated by being sealed with the common seal of the local authority and signed by the proper officer of the authority, and shall not have effect until they are confirmed by the confirming authority.
- (4) At least one month before application for confirmation of the byelaws is made, notice of the intention to apply for confirmation, of the place where a copy of the byelaws may be inspected and of the authority to whom objections may be notified shall be given in a newspaper circulating in the area to which the byelaws are to apply or in such other manner as the confirming authority on the application of the local authority may determine to be sufficient in the circumstances.
- (5) For at least one month before application for confirmation is made, a copy of the byelaws shall be deposited at the offices of the local authority by whom the byelaws are made and shall at all reasonable hours be open to public inspection without payment.
- (6) The local authority by whom the byelaws are made shall on application furnish to any person a copy of the byelaws or of any part thereof on payment of such sum, not exceeding 10p for every hundred words contained in the copy, as the authority may determine.
- (7) Any person aggrieved by any byelaws may, within one month after notice has been published in accordance with the provisions of subsection (4) above, notify in writing his objection and the ground of his objection to the confirming authority.
- (8) Before confirming byelaws, the confirming authority shall take into consideration any objections received by them and may, if they consider it necessary or desirable, hold a local inquiry or cause a local inquiry to be held.
- (9) Unless the Secretary of State shall otherwise direct, every inquiry with respect to byelaws made under any provision of this Act or of the Burgh Police (Scotland) Acts 1892 and 1903 shall be held by the sheriff.
- (10) The confirming authority may confirm with or without modification or refuse to confirm any byelaws submitted under this section for confirmation and may fix the date on which the byelaws are to come into operation, and if no date is so fixed the byelaws shall come into operation at the expiration of one month from the date of their confirmation.
- (11) The local authority shall, as soon as practicable after receiving intimation of the confirmation of the byelaws by the confirming authority, cause a notice of such confirmation, of the date on which the byelaws are to come into operation, and of the place where a copy of the byelaws as confirmed may be inspected, to be given in a newspaper circulating in the area to which the byelaws are to apply or in such other manner as the confirming authority on the application of the local authority may determine to be sufficient in the circumstances.
- (12) A copy of the byelaws when confirmed shall be printed and deposited at the offices of the local authority by whom the byelaws are made and shall at all reasonable hours be open to public inspection without payment, and a copy thereof shall on application be furnished to any person on payment of such sum not exceeding 20p for every copy as the authority may determine.
- (13) The proper officer of a district council shall send a copy of every byelaw made by the council, and confirmed, to the proper officer of the council of the region to which it applies; and the proper officer of a regional council shall send a copy of every byelaw

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made by that council, and confirmed, to the proper officer of the council of any district to which it applies.

- (14) The provisions of this section shall apply, subject to any necessary modifications, in the case of byelaws made by any authority other than a local authority under any enactment passed before the coming into force of this Act and incorporating or applying any of the enactments set out in subsection (1)(c) above.
- (15) In this section "the confirming authority" means the authority or person, if any, specified in the enactment (including any enactment in this Act) under which the byelaws are made, or in any enactment incorporated therein or applied thereby, as the authority or person by whom the byelaws are to be confirmed, or if no authority or person is so specified, means the Secretary of State:

Provided that, notwithstanding that a local Act specifies otherwise, the confirming authority in relation to byelaws made under any local Act shall be the Secretary of State.

203 Offences against byelaws

Byelaws made by a local authority, and for which specific provision is not otherwise made, may provide that persons contravening the byelaws shall be liable on summary conviction to a fine not exceeding such sum as may be fixed by the enactment conferring the power to make the byelaws, or, if no sum is so fixed, the sum of £20, and in the case of a continuing offence a further fine not exceeding such sum as may be fixed as aforesaid, or, if no sum is so fixed, the sum of £5 for each day during which the offence continues after conviction thereof.

204 Evidence of byelaws

The production of a copy of a byelaw purporting to be made by a local authority upon which is endorsed a certificate purporting to be signed by the proper officer of the authority stating—

- (a) that the byelaw was made by the authority ;
- (b) that the copy is a true copy of the byelaw ;
- (c) that on a specified date the byelaw was confirmed by the authority named in the certificate or, as the case may require, was sent to the Secretary of State and has not been disallowed;
- (d) the date, if any, fixed by the confirming authority for the coming into operation of the byelaw ;

shall be sufficient evidence of the facts stated in the certificate, and without proof of the handwriting or official position of any person purporting to sign a certificate in pursuance of this section.

Miscellaneous provisions

205 Lieutenants

- (1) Her Majesty shall appoint for each region such number of lord-lieutenants as she thinks fit, shall appoint a lord-lieutenant for each islands area and may appoint lieutenants for each region and islands area.

- (2) The Lord Provost of the cities of Aberdeen, Dundee, Edinburgh and Glasgow shall by virtue of his office be lord-lieutenant for the district of the city concerned and Her Majesty may appoint lieutenants for each such district.
- (3) Lord-lieutenants and lieutenants appointed for a region under subsection (1) above shall discharge their functions in such parts of the region as may be determined by Order in Council made by Her Majesty.
- (4) Any reference in any enactment passed before or during the same session as this Act or any instrument made before the passing of this Act to a lieutenant of a county shall be construed as a reference to the lord-lieutenant holding office for an area by virtue of this section.
- (5) The persons appointed under section 32 of the Militia Act 1882 to act for the lord-lieutenant as vice-lieutenant shall be known as vice-lord-lieutenants and the references to deputy lieutenants in section 30(4) of that Act (displacement of deputy lieutenants) shall include references to vice-lord-lieutenants.
- (6) The persons who may be appointed under section 31 of the said Act of 1882 to act as lord-lieutenant of an area or who may be appointed a vice-lord-lieutenant of an area under section 32 of that Act shall include a lieutenant for the area appointed under this section.
- (7) Her Majesty may by Order in Council provide that any lieutenant holding office immediately before 16th May 1975 shall continue to hold office on and after that date as lord-lieutenant for such part of a region as may be specified in the Order or for an islands area.
- (8) Any deputy lieutenant holding office immediately before that date shall continue to hold office on and after that date as deputy lieutenant of the part of the region, islands area or district of the city in which he resides or of such other area as may be specified in an order made by the Secretary of State.
- (9) Where an Order in Council is made in pursuance of subsection (3) above, any deputy lieutenant holding office immediately before the date on which the Order in Council is made shall continue to hold office on and after that date as deputy lieutenant of the part of the region in which he resides or of such other part as may be specified in the Order in Council.
- (10) Subsections (7) to (9) above shall not prejudice any power of removal or of directing removal from any office.
- (11) In this section " region " does not include the districts of the cities of Aberdeen, Dundee, Edinburgh and Glasgow.

206 Admission of honorary freemen

- (1) An islands or district council may, by resolution passed by not less than two-thirds of the members voting thereon at a meeting of the council the notice of which specifies the proposed admission as an item of business, admit to be honorary freemen of the islands area or district persons of distinction and any persons who have rendered eminent service to the islands area or district.
- (2) An officer designated for the purpose by the islands or district council shall keep a roll containing the names of persons admitted to be freemen under this section.

207 Limitation of rights of freemen

Nothing in this Part of this Act shall—

- (a) confer any right of membership or any right or interest in the properties, funds, revenues or privileges of any guild or incorporation of crafts; or
- (b) confer any right or interest in any burgess acres or any grazing rights connected therewith, or affect the law or practice existing at the commencement of this Act with reference to the use, enjoyment and administration of any such burgess acres or grazing rights.

208 Provisions as to Sundays, etc.

- (1) Where the day or the last day on which anything is required or permitted by or in pursuance of this Act to be done is a Sunday, Christmas Day, New Year's Day, Good Friday, bank holiday, or a public holiday, or a day appointed for public thanksgiving or mourning, the requirement or permission shall be deemed to relate to the first day thereafter which is not one of the days before mentioned, but, save as aforesaid or as otherwise expressly provided in this Act, in reckoning a number of days for the purposes of this Act, the days before specified shall not be excluded.
- (2) Where under the foregoing provisions of this section an election is postponed, the day on which the election is held shall be treated as the day of election for all purposes of this Act relating to that election:

Provided that where a day is declared to be a bank holiday or day of public thanksgiving or mourning, nothing in this subsection shall affect the validity of any act done in relation to an election before or on the date of the declaration.