



# Enterprise and New Towns (Scotland) Act 1990

## 1990 CHAPTER 35

### PART I

#### SCOTTISH ENTERPRISE AND HIGHLANDS AND ISLANDS ENTERPRISE

##### *Establishment and Functions*

#### **1 Scottish Enterprise and Highlands and Islands Enterprise.**

There shall be established—

- (a) a body to be known as Scottish Enterprise, which shall have the general functions of—
  - (i) furthering the development of Scotland's economy and in that connection providing, maintaining and safeguarding employment;
  - (ii) subject to section 2(1) of this Act [<sup>F1</sup>maintaining and] enhancing skills and capacities relevant to employment in Scotland and assisting persons to establish themselves as self-employed persons there;
  - (iii) promoting Scotland's industrial efficiency and international competitiveness; and
  - (iv) furthering improvement of the environment of Scotland; and
- (b) a body to be known as Highlands and Islands Enterprise, which shall have the general functions of—
  - (i) preparing, concerting, promoting, assisting and undertaking measures for the economic and social development of the Highlands and Islands;
  - (ii) subject to section 2(1) of this Act [<sup>F1</sup>maintaining and] enhancing skills and capacities relevant to employment in the Highlands and Islands and assisting persons to establish themselves as self-employed persons there; and

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(iii) furthering improvement of the environment of the Highlands and Islands;

and Schedule 1 to this Act shall have effect with respect to the constitution and proceedings of, and other matters relating to, those bodies.

#### Textual Amendments

**F1** Words in s. 1(a)(ii)(b)(ii) inserted (30.8.1993) by 1993 c. 19, s. 47(3); S.I. 1993/1908, art. 2(1), Sch.1.

## 2 Functions in relation to training for employment etc.

- (1) Without prejudice to section 17 of this Act, exercise of the general functions mentioned in section 1(a)(ii) and (b)(ii) of this Act shall only be in accordance with arrangements made under subsection (3) below.
- (2) Scottish Enterprise and Highlands and Islands Enterprise shall each—
  - (a) from time to time submit to the Secretary of State particulars of what it proposes to do for the purpose of carrying out such of its general functions as are mentioned in subsection (1) above;
  - (b) ensure that all its activities in relation to those functions are in accordance with such proposals submitted by it to the Secretary of State as have been approved by him and with such modifications (if any) of those proposals as are notified to the body in question by him.
- (3) Scottish Enterprise and Highlands and Islands Enterprise shall each, to such extent as it considers appropriate, make arrangements for the purpose of—
  - (a) assisting persons to train so that they may obtain and retain employment suitable for their ages and capacities;
  - (b) improving and developing any such training; <sup>F2</sup> . . .
  - (c) assisting persons to establish themselves as self-employed persons <sup>F3</sup>; and
  - (d) providing temporary employment for persons who are without employment.]
- (4) Arrangements under subsection (3) above may—
  - (a) include arrangements for encouraging increases in the opportunities for (and types of) <sup>F4</sup>employment and training] that are available to women and girls, to disabled persons or to persons of any racial group (as defined in section 3(1) of the <sup>M1</sup>Race Relations Act 1976) which constitutes a minority within the population of Scotland;
  - (b) be made in respect of training anywhere in the United Kingdom or elsewhere;
  - (c) include provision for the making of payments by Scottish Enterprise or Highlands and Islands Enterprise, by way of grant or loan or otherwise, to persons who provide facilities in pursuance of the arrangements, to persons who use those facilities and to other persons specified in or determined under the arrangements; and
  - (d) include provision for the making of payments to Scottish Enterprise or Highlands and Islands Enterprise by other parties to the arrangements and by persons who use those facilities.
- (5) The payments for which, by virtue of subsection (4)(c) or (d) above, arrangements under subsection (3) above may provide—

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- (a) shall include the payment to a person by Scottish Enterprise or Highlands and Islands Enterprise of an allowance pending a time when payments will be or may be made to that person in respect of his use of facilities which will be or may be made available to him under any such arrangements; and
  - (b) shall not include the payment of any such allowance to a person—
    - (i) for any period after that person has attained the age of eighteen years; or
    - (ii) for any period for which child benefit is payable in respect of that person.
- (6) Other than under section 15 of this Act, no payments shall be made by or on behalf of Scottish Enterprise or Highlands and Islands Enterprise by virtue of any power conferred by subsection (4) above unless the Secretary of State<sup>F5</sup> . . . has approved—
- (a) the amounts of the payments or the manner of determining those amounts; and
  - (b) the terms on which they are made or the manner of determining those terms.
- (7) An education authority shall provide Scottish Enterprise or Highlands and Islands Enterprise with such information in the possession of the authority as the body in question may, by written notice to the authority, reasonably require in connection with the determination of questions relating to the exercise by the body of any power which it has by virtue of subsection (4)(c) above to make payments to any person.

#### Textual Amendments

- F2** Word in s. 2(3) repealed (30.8.1993) by 1993 c. 19, s. 51, **Sch. 10**; S.I. 1993/1908, art. 2(1), **Sch. 1**.
- F3** S. 2(3): word and s. 2(3)(d) inserted (30.8.1993) by 1993 c. 19, s. 47(4)(a); S.I. 1993/1908, art. 2(1), **Sch. 1**.
- F4** Words in s. 2(4) substituted (30.8.1993) by 1993 c. 19, s. 47(4)(b); S.I. 1993/1908, art. 2(1), **Sch. 1**.
- F5** Words in s. 2(6) repealed (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 100(2)**, Pt.IV

#### Modifications etc. (not altering text)

- C1** S. 2(4)(c) excluded (7.10.1996) by S.I. 1996/207, reg. 103(2), **Sch. 7 para. 14**.

#### Marginal Citations

- M1** 1976 c. 74.

### 3 Monitoring of training for employment

Where the functions of Scottish Enterprise, or of Highlands and Islands Enterprise, mentioned in section 2(3)(a) or (b) of this Act are carried out through an agent or are delegated to any person, the body in question shall have the duty (which shall not itself be delegated) of keeping under continuous review the suitability and adequacy of any training provided by that agent, or as the case may be by that person (or his agent), in discharging those functions.

### 4 Further provision as regards functions of Scottish Enterprise.

- (1) For the purposes of its general functions mentioned in section 1(a)(i), (iii) and (iv) of this Act, Scottish Enterprise shall (without prejudice to the generality of that section) to such extent as it considers appropriate—

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- (a) provide or assist in the provision of finance to persons carrying on or intending to carry on industrial undertakings;
  - (b) carry on, or establish and carry on, whether by itself or jointly with any other person, industrial undertakings;
  - (c) assist the establishment or growth of community enterprises or co-operative enterprises;
  - (d) otherwise promote or assist the establishment, growth, modernisation or development of industry or any undertaking in an industry;
  - (e) in accordance with arrangements to be approved by the Secretary of State, provide or adapt sites and provide, adapt, modernise or reconstruct premises for industrial undertakings, or assist any other person to do any of those things, and provide or assist in the provision of related facilities;
  - (f) in such accordance, manage or assist in the management of sites and premises for industrial undertakings;
  - (g) undertake or assist the undertaking of the development, re-development and improvement of the environment;
  - (h) bring derelict land into use or improve its appearance, or assist its being so brought or improved; and
  - (i) promote the private ownership of interests in industrial undertakings by the disposal of securities and other property held by Scottish Enterprise or by any of its subsidiaries,
- and shall discharge such other functions as are conferred by, under or by virtue of this Act.
- (2) The functions mentioned in subsection (1)(b) above shall only be exercised through a company (within the meaning of the <sup>M2</sup>Companies Act 1985) or through a partnership.
- (3) In subsection (1)(c) above—
- “community enterprise” means a body corporate which—
  - (a) in the opinion of Scottish Enterprise contributes or will contribute to the economic and social development of a particular area of Scotland;
  - (b) by its written constitution admits to membership only—
    - (i) persons resident in, or employed in, that area (or both so resident and so employed); or
    - (ii) persons nominated by such persons as are mentioned in subparagraph (i) above; and
  - (c) by that constitution prohibits distribution of profits amongst its members; and
- “co-operative enterprise” means a body which fulfills the criteria specified in paragraphs (a) and (b) of section 2(2) of the <sup>M3</sup>Industrial Common Ownership Act 1976 (whether or not it has been certified by the Secretary of State under that section).
- (4) In exercising its functions, Scottish Enterprise shall have regard to the requirements of agriculture and efficient land management and (without prejudice to its general function of furthering improvement of the environment) to the desirability of safeguarding the environment.
- (5) Arrangements approved by virtue of paragraph (e) of subsection (1) above may, if it appears to the Secretary of State that there are circumstances which justify the giving of special assistance, include provision that he may authorise Scottish Enterprise to

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provide premises for the occupation of an undertaking free of rent for such period as he considers appropriate.

- (6) Without prejudice to the generality of paragraphs (e) and (f) of subsection (1) above, the Secretary of State may authorise Scottish Enterprise to undertake, or assist in, the provision of means of access or other facilities in or for an area where this appears to him to be expedient for the purpose of contributing to or supporting the development of industry in that area.

#### Marginal Citations

M2 1985 c. 6.

M3 1976 c. 78.

## 5 Further provision as regards functions of Highlands and Islands Enterprise.

- (1) For the purposes of its general functions mentioned in section 1(b)(i) and (iii) of this Act, Highlands and Islands Enterprise shall (without prejudice to the generality of that section)—

- (a) keep under review all matters relating to the economic and social well-being and development of the Highlands and Islands;
- (b) after consultation with such local authorities [<sup>F6</sup>, National Park authorities,] and other bodies as appear to it to have an interest, from time to time prepare and submit to the Secretary of State for his approval proposals (whether general or specific in character) for the economic and social development of the Highlands and Islands or any part thereof;
- (c) concert, promote, assist or undertake measures to implement any proposals so approved;
- (d) to such extent as it considers appropriate, undertake or assist the undertaking of the development, re-development and improvement of the environment;
- (e) to such extent as it considers appropriate, bring derelict land into use or improve its appearance or assist its being so brought or improved; and
- (f) advise the Secretary of State on such matters relating to its functions as he may refer to it or as it may think fit,

and shall discharge such other functions as are conferred by, under or by virtue of this Act.

- (2) The Secretary of State may approve, in whole or in part, any proposals submitted to him under subsection (1)(b) above, or may refuse to approve them.
- (3) In exercising its functions, Highlands and Islands Enterprise shall (without prejudice to its general function of furthering improvement of the environment) have regard to the desirability of safeguarding—
- (a) the natural beauty of the countryside in;
  - (b) the flora and fauna of; and
  - (c) the geological and geomorphological features of special interest of, the Highlands and Islands.

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#### Textual Amendments

- F6** Words in s. 5(1)(b) inserted (8.9.2000) by 2000 asp 10, s. 36, **Sch. 5 para. 16** (with s. 32); S.S.I. 2000/312, **art. 2**

## 6 Development and improvement of the environment.

- (1) For the functions mentioned in—
- (a) section 4(1)(g) of this Act, Scottish Enterprise;
  - (b) section 5(1)(d) of this Act, Highlands and Islands Enterprise,
- shall, after consultation with such local authorities [<sup>F7</sup>, National Park authorities,] statutory and other bodies as appear to it to have an interest, from time to time prepare and submit to the Secretary of State for his approval proposals for the development, redevelopment or improvement of any area within or in relation to which the functions in question are exercisable.
- (2) The Secretary of State may approve, in whole or in part or with modifications, any proposals submitted to him under subsection (1) above or may refuse to approve them; and any such approval—
- (a) may relate to a specific acting of the submitting body, or to all actings of that body which are of a class or description specified in the approval; and
  - (b) may be given subject to such conditions as may be so specified.
- (3) The submitting body may—
- (a) either by itself or in conjunction with any other person, implement or assist in implementing proposals approved under this section;
  - (b) make payments of such amount and in such manner as it may, with the approval of the Secretary of State <sup>F8</sup> . . ., determine to any person towards the cost of carrying out works specified in proposals so approved.

#### Textual Amendments

- F7** Words in s. 6(1) inserted (8.9.2000) by 2000 asp 10, s. 36, **Sch. 5 para. 16** (with s. 32); S.S.I. 2000/312, **art. 2**
- F8** Words in s. 6(3)(b) repealed (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 100(3)**, Pt.IV

## 7 Derelict land.

Where it appears to Scottish Enterprise or to Highlands and Islands Enterprise that land is derelict, neglected or unsightly and that steps should be taken for the purpose of enabling the land (in this Act referred to as “derelict land”) to be brought into use or of improving the appearance of the land the body in question—

- (a) in accordance with arrangements approved by the Secretary of State may acquire, by agreement or compulsorily, the derelict land and any other land (whether or not adjacent to the derelict land) whose acquisition is reasonably required for the purpose mentioned above and may carry out, or assist in carrying out, on the derelict land and the other land such works as appear to the body to be expedient for that purpose; and

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- (b) after carrying out those works may dispose of the land free of charge to a local authority or to a development corporation (within the meaning of the <sup>M4</sup>New Towns (Scotland) Act 1968) for the purpose of the land being used as a public open space.

#### Marginal Citations

M4 1968 c. 16.

### Powers

## 8 General and specific powers.

- (1) Subject to section 2(1) of this Act, Scottish Enterprise and Highlands and Islands Enterprise may do anything, whether in Scotland or elsewhere, which is calculated to facilitate or is incidental or conducive to the discharge of their respective general functions; and subject to section 13 of this Act things done by either body under the foregoing provisions of this subsection may (without prejudice to the generality of those provisions) include—
- (a) in addition to any power exercisable by virtue of section 2(4)(c) of this Act, making—
    - (i) grants; or
    - (ii) loans,on such conditions as the granter or lender thinks fit;
  - (b) acquiring, holding and disposing of securities;
  - (c) guaranteeing obligations (arising out of loans or otherwise) incurred by any other person;
  - (d) in addition to any power exercisable under or by virtue of section 2(3) or 4(1)(e) of this Act providing, or assisting in the provision of, advisory or other services or facilities for any other person;
  - (e) acquiring land by agreement;
  - (f) acquiring land (including servitudes or other rights in or over land by the creation of new rights) compulsorily, except that in so far as acquisition is for or in connection with the carrying on of industrial undertakings in any area it shall only be of land whose acquisition appears to the body in question to be necessary to secure an adequate supply of land for such undertakings in the area;
  - (g) in addition to any power exercisable under subsection (1)(f) of section 4 of this Act, holding land acquired by it and disposing of or otherwise dealing with such land, so however that, except with the consent of the Secretary of State (whether or not given by virtue of subsection (5) of that section) and subject to section 7(b) of this Act, neither body shall dispose of land, or grant a lease of land, for a consideration less than the best that reasonably can be obtained;
  - (h) acquiring and disposing of plant, machinery, equipment and other property;
  - (i) in addition to any power exercisable under the said subsection (1)(f), managing, developing, or carrying out works on, land, or assisting in such management or development or in the carrying out of such works, and maintaining or assisting in the maintenance of such works;

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- (j) making land, plant, machinery, equipment and other property available for use by other persons;
  - (k) acting directly or through an agent (who, without prejudice to the generality of this paragraph, may be the Secretary of State), or itself acting as agent for another person;
  - (l) forming, promoting, or joining with any other person in forming or promoting, companies (within the meaning of the <sup>M5</sup>Companies Act 1985);
  - (m) forming and registering societies, or joining with any other person in forming and registering societies, under the <sup>M6</sup>Industrial and Provident Societies Act 1965;
  - (n) forming partnerships with other persons;
  - (o) carrying out, or commissioning the carrying out of, such enquiries, investigations or researches as it may deem necessary or expedient and disseminating, or assisting in the dissemination of, information derived from those enquiries, investigations or researches;
  - (p) promoting, or assisting in the promotion of, publicity;
  - (q) charging for any of its services;
  - (r) accepting any gift or grant made to it for the purposes of any of the body's functions and, subject to the terms of the gift or grant, and to the provisions of this Act, applying the gift or grant for those purposes;
  - (s) turning its resources to account so far as they are not required for the exercise of any of its general functions and powers; and
  - (t) reclaiming land from the sea.
- (2) Without prejudice to the generality of the preceding provisions of this Act, Highlands and Islands Enterprise may engage in any activity which it deems expedient for the introduction, operation or development, by it or by other persons, or by it and by other persons, of industrial and other enterprises in the Highlands and Islands.
- (3) In addition to its power under subsection (1)(p) above, Highlands and Islands Enterprise may promote, or assist in the promotion of, any publicity relating to the Highlands and Islands.
- (4) Subject to section 13(3) of this Act, in addition to its power under subsection (1)(b) above, Highlands and Islands Enterprise may acquire and hold securities for the purpose of assisting in the provision of finance to persons carrying on or intending to carry on industrial undertakings.
- (5) Without prejudice to subsection (2) above, Highlands and Islands Enterprise may for the purposes of its general functions carry on, or establish and carry on, (whether by itself or jointly with another person) a business or industrial undertaking which in the opinion of the body contributes or will contribute to the economic and social development, or the improvement of the environment, of the Highlands and Islands.
- (6) Without prejudice to subsection (1)(f) above and to section 9 of this Act, the powers and duties conferred on Scottish Enterprise and Highlands and Islands Enterprise by this Act shall, subject to [<sup>F9</sup>section 32] of this Act, be exercisable, in relation to land not belonging to them, on such terms and conditions as may be arranged by agreement with all persons having an interest in the land.
- (7) Any power conferred by subsection (1) above to transfer securities or other property includes, without prejudice to the generality of that subsection, the power to transfer the securities or property (or where the securities or property are held by a subsidiary



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of the body in question to procure transfer) to the [<sup>F10</sup>Scottish Ministers or a nominee of theirs].

(8) Where Highlands and Islands Enterprise makes a loan under subsection (1)(a) above to a crofter for the purpose of assisting him—

- (a) in the erection of any building or other structure, or the execution of any works, on his croft; or
- (b) in carrying on any business or undertaking on or in connection with his croft, the body may give notice of the loan to the landlord of the croft and to the Secretary of State.

(9) If notice is given under subsection (8) above then—

- (a) in relation to the loan sections 11(7)(a) and 23(3) of the <sup>M7</sup>Crofters (Scotland) Act 1955 (which provide respectively for payment to the Secretary of State of the value of improvements on the croft of a deceased crofter up to the amount of his liability to the Secretary of State and for the transfer to the Secretary of State of rights to compensation for improvements) shall apply as if for the references to the Secretary of State there were substituted references to Highlands and Islands Enterprise, so however that—
  - (i) any rights which Highlands and Islands Enterprise thereby acquires shall be postponed to any rights, whenever constituted, of the Secretary of State under those provisions; and
  - (ii) the landlord shall be entitled to set off all rent due, or to become due, by the crofter against any sum found to be due to Highlands and Islands Enterprise by virtue of this paragraph;
- (b) any amount due to the executor of the crofter under section 11(7A) of the said Act of 1955 (which provides in certain circumstances for payment by the Secretary of State to the executor of the difference between the value of improvements computed on one basis and that value computed on another) or to the crofter under section 6(3) of the <sup>M8</sup>Crofters (Scotland) Act 1961 (which provides for payments to certain crofters by the Secretary of State of sums additional to compensation in respect of improvements) shall, up to the amount of any liability outstanding on the loan after giving effect to paragraph (a) above, be payable not to the executor but to Highlands and Islands Enterprise.

(10) In subsections (8) and (9) above—

- (a) “croft”, “crofter” and “landlord” have the meanings respectively assigned to them by the said Act of 1955; and
- (b) any reference to a crofter includes a reference to a statutory successor within the meaning of that Act.

(11) For the purposes of subsection (1)(e) above—

- (a) the Lands Clauses Acts (except so much of them as relates to the acquisition of land otherwise than by agreement, the provisions relating to access to the special Act and sections 120 to 125 of the <sup>M9</sup>Lands Clauses Consolidation (Scotland) Act 1845); and
- (b) sections 6 and 70 to 78 of the <sup>M10</sup>Railway Clauses Consolidation (Scotland) Act 1845 (as originally enacted and not as amended by section 15 of the <sup>M11</sup>Mines (Working Facilities and Support) Act 1923),

shall be incorporated with this section; and, in construing those Acts for the purposes of this section, this section shall be deemed to be the special Act and Scottish

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Enterprise, or as the case may be Highlands and Islands Enterprise, to be the promoter of the undertaking or company.

- (12) For the purposes of subsection (1)(f) above, the <sup>M12</sup>Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 shall apply as if Scottish Enterprise, or as the case may be Highlands and Islands Enterprise, were a local authority and as if this section were contained in an Act in force immediately before the commencement of that Act.
- (13) For the purposes of section 278 of the <sup>M13</sup>Town and Country Planning (Scotland) Act 1972 (general vesting declarations) Scottish Enterprise and Highlands and Islands Enterprise shall be deemed to be public authorities to which that section applies.

#### Textual Amendments

- F9** Words in s. 8(6) substituted (4.4.2003) by Title Conditions (Scotland) Act 2003 (asp 9), ss. 113(2), 129(3) (with ss. 119, 121)
- F10** Words in s. 8(7) substituted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 100(4)

#### Marginal Citations

- M5** 1985 c. 6.  
**M6** 1965 c. 12.  
**M7** 1955 c. 21.  
**M8** 1961 c. 58.  
**M9** 1845 c. 19.  
**M10** 1845 c. 33.  
**M11** 1923 c. 20.  
**M12** 1947 c. 42.  
**M13** 1972 c. 52.

## 9 Powers of entry.

- (1) Subject to subsection (2) below, any person duly authorised in writing—
- (a) by Scottish Enterprise or by Highlands and Islands Enterprise (the body in question being in this paragraph referred to as the “authorising body”) may, at any reasonable time, enter upon land in order to survey it—
- (i) where the authorising body has under consideration the lease or purchase of the land;
  - (ii) for the purpose of the erection of buildings or other structures, or the carrying out of works or other operations, on the land or the provision of equipment and services on or in connection with the land; or
  - (iii) for the purpose of determining whether, and if so in what manner, any of the functions of the authorising body (other than functions referred to in section 2(3), 4(1)(a) or (b) or as the case may be 5(1)(b) of this Act) should be exercised in relation to the land;
- (b) by Highlands and Islands Enterprise may, at any reasonable time, enter upon land in order to survey it—
- (i) in connection with any proposals for submission by Highlands and Islands Enterprise to the Secretary of State under the said section 5(1)(b) or with such proposals so submitted; or
  - (ii) for any purpose not mentioned in paragraph (a) or (b)(i) above but connected with the exercise of Highlands and Islands Enterprise’s

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functions under this Act (other than functions referred to in section 2(3) thereof).

- (2) A person authorised under this section to enter upon any land shall, if so required by the occupier or anyone acting on the occupier's behalf, produce evidence of his authority, and shall not demand admission as of right to any land which is occupied unless at least fourteen days' notice of the intended entry has been given to the occupier.
- (3) Where any land is damaged in the exercise of a power of entry conferred under this section or in the making of any survey for the purpose of which any such power of entry has been so conferred, compensation in respect of that damage may be recovered by any person interested in the land from Scottish Enterprise or as the case may be from Highlands and Islands Enterprise; and the amount of such compensation shall, in the case of any dispute, be determined by the Lands Tribunal for Scotland.
- (4) Any power conferred by this section to survey land shall be construed as including power to search and bore for the purpose of ascertaining the nature of the subsoil or the presence of minerals therein if notice of the intention to do so has been included in the notice required by subsection (2) of this section; but if the land is held by statutory undertakers who object to the proposed works on the ground that carrying them out would be seriously detrimental to the carrying on of the statutory undertaking, the works shall not be carried out except with the authority of the appropriate Minister.
- (5) In subsection (4) above, "appropriate Minister" and "statutory undertakers" have the same meanings as they have respectively in [F11]217 and 214 of the Town and Country Planning (Scotland) Act 1997].
- (6) A person entering upon any land by virtue of this section may take with him such other persons as may be necessary, and on leaving any premises which he has so entered and which are either unoccupied premises or premises the occupier of which is temporarily absent, shall leave them as effectively secured against unauthorised entry as he found them.
- (7) A person who wilfully obstructs any person acting in the exercise of his powers under this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (8) A person who, having in accordance with this section been admitted to a factory, workshop or workplace, discloses to any other person information thereby obtained as to any manufacturing process or trade secret shall, unless the disclosure was made in the course of performing his duty in connection with the purpose for which he was authorised to enter the premises, be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum or on conviction on indictment to a fine.
- (9) Nothing in this section shall affect any rights conferred by or in accordance with [F12]the electronic communications code] on the operator of [F13]an electronic communications code network] or any duty of any such operator under that code or apply to any [F14]electronic communications apparatus] kept installed for the purposes of any [F15]such network].

#### Textual Amendments

F11 Words in s. 9(5) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), Sch. 2 para. 47(2).

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- F12** Words in s. 9(9) substituted (17.9.2003) by Communications Act 2003 (Consequential Amendments) Order 2003 (S.I. 2003/2155), art. 1(1), **Sch. 1 para. 12(a)**
- F13** Words in s. 9(9) substituted (17.9.2003) by Communications Act 2003 (Consequential Amendments) Order 2003 (S.I. 2003/2155), art. 1(1), **Sch. 1 para. 12(b)**
- F14** Words in s. 9(9) substituted (17.9.2003) by Communications Act 2003 (Consequential Amendments) Order 2003 (S.I. 2003/2155), art. 1(1), **Sch. 1 para. 12(c)**
- F15** Words in s. 9(9) substituted (17.9.2003) by Communications Act 2003 (Consequential Amendments) Order 2003 (S.I. 2003/2155), art. 1(1), **Sch. 1 para. 12(d)**

**Modifications etc. (not altering text)**

- C2** S. 9 extended (1.3.1996) by 1995 c. 45, s. 16, **Sch. 4 para. 2(1)(xxxviii)**; S.I. 1996/218, **art. 2**.  
S. 9 modified (1.3.1996) by 1995 c. 45, s. 16, **Sch. 4 para. 2(10)(h)**; S.I. 1996/218, **art. 2**.

**10 Power of Scottish Enterprise to obtain information.**

- (1) Scottish Enterprise may, for the purpose of enabling it to make an order or serve any notice or other document which, by, under or by virtue of any of the provisions of this Act it is authorised or required to make or serve, require the occupier of any premises, and any person who, either directly or indirectly, receives rent in respect of any premises, to state in writing the nature of his interest in the premises and the name and address of any other person known to him to have an interest in the premises, whether as superior, owner, heritable creditor, lessee or otherwise.
- (2) Any person who, having been required in pursuance of this section to give any information—
- (a) refuses, or fails within ten days of being so required, to give that information shall, unless he can show reasonable cause for the refusal or failure, be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale; or
  - (b) knowingly or recklessly makes any misstatement in response to the requirement shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum or on conviction on indictment to a fine.
- (3) Where an offence under this section committed by a body corporate or a Scottish firm is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, partner, manager, secretary or other similar officer of the body corporate or firm or a person who was purporting to act in any such capacity, he as well as the body corporate or, as the case may be, the firm shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
- (4) Where the affairs of a body corporate are managed by its members, subsection (3) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

**11 Power of Highlands and Islands Enterprise to obtain information.**

- (1) Highlands and Islands Enterprise may by notice served on the owner or occupier of any land in the Highlands and Islands, or on any person carrying on a business or undertaking in the Highlands and Islands, require him to furnish it with such information specified in the notice as it reasonably may require for the execution in

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*Status: Point in time view as at 17/09/2003.*

*Changes to legislation: There are currently no known outstanding effects for the Enterprise and New Towns (Scotland) Act 1990, Part 1. (See end of Document for details)*

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relation to the land, business or undertaking, of any of its functions under this Act other than the general function mentioned in section 1(b)(ii) thereof.

- (2) A person on whom a notice has been served under subsection (1) above may, within one month after such service, appeal to the sheriff on the ground that the information specified in the notice, or some part of that information, is not reasonably required by Highlands and Islands Enterprise in terms of that subsection; and the sheriff may make such order confirming, quashing or varying the notice as he thinks fit.
- (3) Without prejudice to the generality of subsection (2) above, the sheriff may, in determining, for the purposes of that subsection, whether information is reasonably required, take into account the probable cost or inconvenience to the appellant of furnishing the information.
- (4) Any person who, having been required in pursuance of this section to give any information—
  - (a) refuses, or fails timeously, to furnish the information specified in the notice (as varied by the sheriff as the case may be) shall, unless he can show reasonable cause for the refusal or failure, be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale; or
  - (b) knowingly or recklessly makes any misstatement in response to the requirement shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum or on conviction on indictment to a fine.
- (5) Subsections (3) and (4) of section 10 of this Act shall apply in relation to an offence under this section as they apply in relation to an offence under that section.
- (6) The reference in subsection (4)(a) above to a person failing timeously to furnish information specified in a notice is a reference to his failing to furnish it within three months after service of the notice or, in a case where there has been an appeal under subsection (2) above as respects the notice, within three months after a decision on that appeal confirming or varying the notice, or of the abandonment of the appeal.
- (7) Subject to subsection (9) below, information which has been obtained by virtue of this section with respect to any land, business or undertaking shall not without the consent of the owner and occupier of that land or, as the case may be, of the person carrying on that business or undertaking, be disclosed other than for the purposes of the execution of functions which is mentioned in subsection (1) above or in compliance with a direction under section 14(2) of this Act.
- (8) A person who discloses information to any other person in contravention of subsection (7) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum or on conviction on indictment to a fine.
- (9) Nothing in subsection (7) above applies to a disclosure of information made for the purposes of any legal proceedings pursuant to this Part of this Act (or, if they are criminal proceedings, whether pursuant to this Part of this Act or not) or for the purposes of a report of any legal proceedings.

## **12 Further provision as regards obtaining information etc.**

- (1) Scottish Enterprise and Highlands and Islands Enterprise shall each be a competent authority for the purposes of the <sup>M14</sup>Statistics of Trade Act 1947, and the reference in section 1(1) of that Act (power of competent authorities to obtain information) to the

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discharge by government departments of their functions shall include a reference to the discharge by each of the bodies of its functions.

(2) Nothing in section 9 of the said Act of 1947 (restrictions on disclosure of information) shall prevent or penalise—

- (a) the disclosure by the Secretary of State of relevant information to Scottish Enterprise or Highlands and Islands Enterprise;
- (b) the disclosure by Scottish Enterprise or Highlands and Islands Enterprise of relevant information to a government department;
- (c) the disclosure by Scottish Enterprise and Highlands and Islands Enterprise to each other, or by either to a board, of relevant information which is of a kind specified in a notice in writing given to the body making the disclosure and to the recipient of the information by the Secretary of State in pursuance of this paragraph;
- (d) the disclosure by Scottish Enterprise or Highlands and Islands Enterprise of relevant information, consisting of the name and address of any establishment, the numbers of persons of different descriptions employed there and the nature of the activities carried on there, to—
  - (i) a person who is, or is to be, engaged in carrying out on behalf of either body (or both bodies) any research or survey related to matters connected with training for or relevant to employment; or
  - (ii) an officer of a planning authority (within the meaning of the <sup>M15</sup>Town and Country Planning (Scotland) Act 1972) or of a development corporation (within the meaning of the <sup>M16</sup>New Towns (Scotland) Act 1968), being an officer who is authorised by the authority or as the case may be by the corporation to receive the information; or
- (e) the disclosure by Scottish Enterprise or Highlands and Islands Enterprise to a person to whom notice in writing is given by the Secretary of State in pursuance of this paragraph of statistics compiled wholly or partly from relevant information about the number of persons employed in any activity or area provided that the giving of the notice is intimated by the Secretary of State to the body in question before the disclosure.

(3) In subsection (2) above—

“a board” means an industrial training board established under section 1 of the <sup>M17</sup>Industrial Training Act 1964 or under section 1 of the <sup>M18</sup>Industrial Training Act 1982; and

“relevant information” means information obtained under the <sup>M19</sup>Statistics of Trade Act 1947,

and any reference in that subsection to—

- (i) the Secretary of State, a government department, Scottish Enterprise, Highlands and Islands Enterprise or such a board includes an officer of his, or as the case may be of that body;
- (ii) such a board includes a committee appointed by the board, any officer of such a committee and any person entitled to take part in proceedings of the board.

(4) Notice in pursuance of paragraph (c) or (e) of subsection (2) above shall include specification of the purpose for which the information disclosed may be used.

(5) A person to whom information is disclosed by virtue of subsection (2) above shall not use the information for a purpose other than—

*Status: Point in time view as at 17/09/2003.*

*Changes to legislation: There are currently no known outstanding effects for the Enterprise and New Towns (Scotland) Act 1990, Part I. (See end of Document for details)*

- (a) in a case falling within paragraph (a) of the subsection, a purpose of the body to which the disclosure is made;
  - (b) in a case falling within paragraph (b) of the subsection, a purpose of the government department in question;
  - (c) in a case falling within paragraph (c) or (e) of the subsection, the purpose specified under subsection (4) above in the notice given to the person in pursuance of the paragraph in question;
  - (d) in a case falling within paragraph (d)(i) of the subsection, a purpose related to the carrying out of the research or survey in question;
  - (e) in the case of information given by virtue of paragraph (d)(ii) of the subsection to an officer of a planning authority, the purposes of the functions conferred on the authority by Part II of [<sup>F16</sup>the Town and Country Planning (Scotland) Act 1997]; and
  - (f) in the case of information given by virtue of the said paragraph (d)(ii) to an officer of a development corporation, the purposes of the functions conferred on the corporation by section 3 of the <sup>M20</sup>New Towns (Scotland) Act 1968 (objects and general powers of corporation).
- (6) A person who contravenes subsection (5) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (7) Without prejudice to section 30(5) of this Act, Scottish Enterprise and Highlands and Islands Enterprise shall each furnish the Secretary of State with such information in its possession as he may require in connection with the determination of questions relating to contributions or benefit under—
- (a) the benefit Acts (as defined in section 84(1) of the <sup>M21</sup>Social Security Act 1986); or
  - (b) the <sup>M22</sup>Social Security Act 1988,
- and any information falling to be furnished in pursuance of this subsection shall be furnished in such form and at such times as the Secretary of State may direct.

#### Textual Amendments

**F16** Words in s. 12(5)(e) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), **Sch. 2 para. 47(3)**.

#### Marginal Citations

**M14** 1947 c. 39.  
**M15** 1972 c. 52.  
**M16** 1968 c. 16.  
**M17** 1964 c. 16.  
**M18** 1982 c. 10.  
**M19** 1947 c. 39.  
**M20** 1968 c. 16.  
**M21** 1986 c. 50.  
**M22** 1988 c. 7.

### 13 Restrictions on exercise of certain powers.

- (1) Except with the approval of the Secretary of State, the powers mentioned in subsection (1)(a)(ii), (b), (c), (l) (in relation to forming or promoting companies but not in relation to joining with any other person in forming or promoting companies)

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*Changes to legislation: There are currently no known outstanding effects for the Enterprise and New Towns (Scotland) Act 1990, Part I. (See end of Document for details)*

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- and (n) of section 8 of this Act shall be exercised by Scottish Enterprise in connection only with such of its functions as are mentioned in section 4 (1)(a) or (b) of this Act.
- (2) The powers mentioned in subsections (1)(a)(i) and (e) to (g) and (4) of the said section 8 shall be exercised only in accordance with arrangements made with the Secretary of State.
  - (3) The powers mentioned in subsections (1)(a), (b), (d), (l) and (m) and (4) of the said section 8 shall be exercised by Highlands and Islands Enterprise as regards only persons carrying on, or proposing to carry on, whether or not wholly within the Highlands and Islands, a business or undertaking which in the opinion of the body contributes or will contribute to the economic and social development, or the improvement of the environment, of the Highlands and Islands.
  - (4) Neither Scottish Enterprise nor any of its subsidiaries shall acquire any of the share capital of a body corporate except with the consent of the Secretary of State or in accordance with any general authority given by the Secretary of State—
    - (a) if the acquisition would entitle Scottish Enterprise to exercise, or control the exercise of, 30% or more of the votes at any general meeting of the body corporate; or
    - (b) if the value of the consideration for the acquisition, together with the value of any consideration paid for share capital of the body corporate already held by Scottish Enterprise or any of its subsidiaries would exceed £1,000,000.
  - (5) Subsection (4)(a) above shall not restrict the acquisition of share capital which gives a right to vote exercisable only in restricted circumstances; and where Scottish Enterprise holds such share capital the fact that it does so shall be disregarded for the purpose of determining whether subsection (4)(a) above prevents acquisition of further share capital of the same body corporate.

#### **14 Power of Secretary of State to give directions.**

- (1) The Secretary of State may after consulting with—
  - (a) Scottish Enterprise, give Scottish Enterprise;
  - (b) Highlands and Islands Enterprise, give Highlands and Islands Enterprise,
 directions of a general or specific character as to the exercise of its functions; and it shall be the duty of the body in question to give effect to any such directions.
- (2) Without prejudice to sections 12(7) and 30(5) of this Act, the Secretary of State may give directions to Scottish Enterprise or to Highlands and Islands Enterprise requiring the body in question to furnish to a government department, in a form specified in the directions, any information so specified which has been obtained by that body by virtue of section 12(1) of this Act or otherwise.

#### **[<sup>F17</sup>14A Power of Ministers to confer or impose functions.**

- (1) Without prejudice to the foregoing provisions of this Act, the functions of each of Scottish Enterprise and Highlands and Islands Enterprise shall include—
  - (a) a power to do anything in connection with unemployment, training for employment or employment which it is authorised to do by a Minister of the Crown; and



*Status: Point in time view as at 17/09/2003.*

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- (b) a duty to do anything in connection with unemployment, training for employment or employment which it is required to do by or under a direction given to it by a Minister of the Crown.
- (2) Scottish Enterprise and Highlands and Islands Enterprise shall each—
- (a) from time to time submit to the Secretary of State particulars of what it proposes to do for the purpose of carrying out the functions conferred or imposed upon it by or under subsection (1) above; and
  - (b) ensure that all its activities in relation to those functions are in accordance with such proposals submitted by it to the Secretary of State as have been approved by him and with such modifications (if any) of those proposals as are notified to the body in question by him.
- (3) The power of a Minister of the Crown by virtue of subsection (1) above to authorise or direct Scottish Enterprise or Highlands and Islands Enterprise to do anything shall include the power to delegate powers conferred on him by any enactment; but nothing in this section shall authorise any Minister of the Crown to delegate a power to make subordinate legislation (within the meaning of the <sup>M23</sup>Interpretation Act 1978).]

#### Textual Amendments

**F17** S. 14A inserted (30.8.1993) by 1993 c. 19, s. 47(5); S.I. 1993/1908, art. 2(1), Sch.1.

#### Modifications etc. (not altering text)

**C3** S. 14A amended (1.7.1999) as to functions conferred on a Minister of the Crown by S.I. 1999/1750, art. 4, Sch. 3

#### Marginal Citations

**M23** 1978 c. 30.

## 15 Industrial injuries benefit.

- (1) Where it appears to—
- (a) Scottish Enterprise; or
  - (b) Highlands and Islands Enterprise,
- that a person would have been entitled, by reference to an injury or disease developed by him or by another person in consequence of attendance at a course provided or approved by it or in consequence of the use of facilities so provided or approved, to receive any benefit or increase in benefit in pursuance of Part II of the <sup>M24</sup>Social Security Act 1975 but for the fact that he or the other person was not at a relevant time an employed earner, it may make to him payments equal to the whole or part of the benefit or increase in question.
- (2) With the approval of the Secretary of State—
- (a) Scottish Enterprise; or
  - (b) Highlands and Islands Enterprise,
- may make to a person payments by way of travelling and subsistence allowances and compensation for loss of remunerative time which it considers are appropriate in connection with the person's attendance at any examination connected with a claim for payments from it under subsection (1) above.

*Status: Point in time view as at 17/09/2003.*

*Changes to legislation: There are currently no known outstanding effects for the Enterprise and New Towns (Scotland) Act 1990, Part I. (See end of Document for details)*

#### Marginal Citations

M24 1975 c. 14.

### 16 Courses of training etc.: duty to give preference to certain categories of disabled person.

(1) It shall be the duty of—

- (a) Scottish Enterprise; and
- (b) Highlands and Islands Enterprise,

in exercising any power which the body in question has to select disabled persons for courses of training, to give preference, so far as the body in question considers it consistent with the efficient exercise of the power, to persons of the classes specified in section 16 of the <sup>M25</sup>Disabled Persons (Employment) Act 1944 (classes of ex-service men and women to whom preference is to be given in terms of that section).

(2) In subsection (1) above, “disabled person” has the same meaning as in the [<sup>F18</sup>Disability Discrimination Act 1995].

#### Textual Amendments

F18 Words in s. 16(2) substituted (2.12.1996) by 1995 c. 50, s. 70(4), Sch. 6 para. 6 (with ss. 59, 64, 65); S.I. 1996/1474, art. 2, Sch. Pt. III.

#### Marginal Citations

M25 1944 c. 10.

### 17 Encouragement of women, members of minority racial groups and disabled persons to take advantage of opportunities for certain work etc.

Without prejudice to paragraph (a) of section 2(4) of this Act or to any enactment prohibiting discrimination (within the meaning of the <sup>M26</sup>Sex Discrimination Act 1975 or the <sup>M27</sup>Race Relations Act 1976), Scottish Enterprise and Highlands and Islands Enterprise shall each, in exercising its functions, promote—

- (a) such actings by any employer as are lawful by virtue of section 48(1) of the said Act of 1975 (facilities for women only or for men only to train for, and encouragement for them to take up, work not ordinarily done for the employer by persons of the sex in question etc.) or 38(1) of the said Act of 1976 (corresponding facilities and encouragement in relation to members of particular racial groups); and
- (b) actings by any employer—
  - (i) to afford access to facilities for training for disabled persons which would help to fit them for particular work in his employment; or
  - (ii) to encourage disabled persons to take advantage of opportunities for doing such work.

#### Marginal Citations

M26 1975 c. 65.

*Status: Point in time view as at 17/09/2003.*

*Changes to legislation: There are currently no known outstanding effects for the Enterprise and New Towns (Scotland) Act 1990, Part I. (See end of Document for details)*

**M27** 1976 c. 74.

## **18 Prohibition on discrimination in provision of certain facilities or services.**

In sections 16 of the <sup>M28</sup>Sex Discrimination Act 1975 and 15 of the <sup>M29</sup>Race Relations Act 1976 (prohibitions on discrimination in provision of facilities or services under section 2 of the <sup>M30</sup>Employment and Training Act 1973), there shall in each case after subsection (1) be inserted the following subsection—

“(1A) It is unlawful for Scottish Enterprise or Highlands and Islands Enterprise to discriminate in the provision of facilities or services under such arrangements as are mentioned in section 2(3) of the Enterprise and New Towns (Scotland) Act 1990 (arrangements analogous to arrangements in pursuance of section 2 of the said Act of 1973).”.

### **Marginal Citations**

**M28** 1975 c. 65.

**M29** 1976 c. 74.

**M30** 1973 c. 50.

### *Delegation and Assistance*

## **19 Delegation of certain functions and powers.**

- (1) Subject to subsection (2) below and to section 3 of this Act, and without prejudice to section 8(1)(k) thereof, Scottish Enterprise and Highlands and Islands Enterprise may each arrange for the discharge of any of its functions by another person on such terms as may be agreed between it and that person; and with the function so delegated it may delegate to the person such of its powers as are requisite for discharging the function and may (under section 8(1) of this Act) transfer to the person such of its property as it considers appropriate on such terms as may be so agreed.
- (2) The following shall not be delegated under subsection (1) above—
  - (a) the functions of Scottish Enterprise, and of Highlands and Islands Enterprise, mentioned in section 2(2) of this Act;
  - (b) the functions of Highlands and Islands Enterprise mentioned in paragraphs (a), (b) and (f) of section 5(1) of this Act;
  - (c) any power to acquire land compulsorily or by virtue of section 8(11) of this Act;
  - (d) any power to authorise entry to land; or
  - (e) any power to require or obtain information.
- (3) Any arrangement made by Scottish Enterprise or Highlands and Islands Enterprise under subsection (1) above shall not prevent the body in question from itself exercising the delegated function or any power delegated with the function.

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*Status: Point in time view as at 17/09/2003.*

*Changes to legislation: There are currently no known outstanding effects for the Enterprise and New Towns (Scotland) Act 1990, Part I. (See end of Document for details)*

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## **20 Assistance from local authorities and development corporations in carrying out certain functions.**

- (1) Any local authority may, within their area, act as agent for Scottish Enterprise or Highlands and Islands Enterprise or for any relevant person, and any development corporation of a new town may so act whether within or, with the consent of the Secretary of State, outwith the designated area of the new town, to carry out any of the functions—
  - (a) of Scottish Enterprise mentioned in paragraphs (d) to (h) of section 4(1) of this Act; or
  - (b) of Highlands and Islands Enterprise mentioned in paragraphs (c) to (e) of section 5(1) of this Act.
- (2) For the purposes of assisting Scottish Enterprise, Highlands and Islands Enterprise or any relevant person to carry out any of the functions referred to in paragraph (a) or (b) of subsection (1) above, a local authority or development corporation, on being requested by the body or person in question, may place at its or his disposal the services of officers or servants of the authority or corporation on such terms as may be agreed with that body or person.
- (3) The references in subsections (1) and (2) above to any relevant person are to a person to whom any of the functions to be carried out has been delegated under section 19(1) of this Act.

### *Areas of operation*

## **21 Areas of operation.**

- (1) Subject to the provisions of this Part of this Act, the area within or in relation to which the functions of Highlands and Islands Enterprise shall be exercisable (in this Act referred to as “the Highlands and Islands”) shall comprise—
  - <sup>F19</sup>(a) the local government areas of Highland, Western Isles, Orkney Islands, Shetland Islands and that part of Argyll and Bute which is the area of the former Argyll and Bute District Council and the islands of Arran, Great Cumbrae and Little Cumbrae;]
  - (b) in the [<sup>F20</sup>local government area of Moray,], the parishes of Aberlour, Cabrach, Dallas, Dyke, Edinkillie, Forres, Inveravon, Kinloss, Kirkmichael, Knockando, Mortlach, Rafford and Rothes; and
  - (c) such other parts of Scotland as, having regard to their character and their proximity to the area mentioned in paragraphs (a) and (b) above, the Secretary of State may by order made by statutory instrument from time to time designate.
- (2) An order shall not be made under subsection (1) above unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament.
- (3) The functions of Scottish Enterprise shall be exercisable throughout Scotland; but within or in relation to the area mentioned in subsection (1) above only if and in so far as their exercise—
  - (a) is requested by Highlands and Islands Enterprise; or
  - (b) is, after his consulting not only with Scottish Enterprise but also with Highlands and Islands Enterprise, directed by the Secretary of State under section 14(1)(a) of this Act.

*Status: Point in time view as at 17/09/2003.*

*Changes to legislation: There are currently no known outstanding effects for the Enterprise and New Towns (Scotland) Act 1990, Part I. (See end of Document for details)*

(4) Highlands and Islands Enterprise shall have an office in the Highlands and Islands at which communications and notices will be received.

[<sup>F21</sup>(5) In this section references to local government areas are references to the new local government areas within the meaning of Part I of the Local Government etc. (Scotland) Act 1994.]

#### Textual Amendments

**F19** S. 21(1)(a) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 164(2)(a)(i)**; S.I. 1996/323, **art. 4(c)**.

**F20** Words in s. 21(1)(b) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 164(2)(a)(ii)**; S.I. 1996/323, **art. 4(c)**.

**F21** S. 21(5) inserted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 164(2)(b)**; S.I. 1996/323, **art. 4(c)**.

*Vesting of property of the Scottish Development Agency in Scottish Enterprise and of the Highlands and Islands Development Board in Highlands and Islands Enterprise etc.*

## 22 Transfer of property, rights and liabilities.

(1) By virtue of this subsection, on a date which the Secretary of State may by order appoint—

- (a) for the purposes of this paragraph (such date being in this Act referred to as “the first transfer date”) all property, rights and liabilities to which the Scottish Development Agency are entitled or subject immediately before the first transfer date shall instead become property, rights and liabilities of, and vest in, Scottish Enterprise (that body being referred to in Schedule 3 to this Act as the Scottish Development Agency’s “successor”);
- (b) for the purposes of this paragraph (such date being so referred to as “the second transfer date”) all property, rights and liabilities to which the Highlands and Islands Development Board are entitled or subject immediately before the second transfer date shall instead become property, rights and liabilities of, and vest in, Highlands and Islands Enterprise (that body being referred to in the said Schedule as the Highlands and Islands Development Board’s “successor”).

(2) References in this Act to—

- (a) property, rights and liabilities of the Scottish Development Agency or of the Highlands and Islands Development Board are references to all such property, rights and liabilities whether or not capable of being transferred or assigned by the said Agency or as the case may be by the said Board;
- (b) liabilities of the Scottish Development Agency include, notwithstanding the repeal by this Act of Schedule 2 to the <sup>M31</sup>Scottish Development Agency Act 1975 (financial and administrative provisions relating to the Agency), any liability arising under or by virtue of that Schedule.

(3) It is hereby declared for the avoidance of doubt that—

- (a) any reference in this Act to property of the Scottish Development Agency or of the Highlands and Islands Development Board is a reference to such property whether situated in the United Kingdom or elsewhere;

*Status: Point in time view as at 17/09/2003.*

*Changes to legislation: There are currently no known outstanding effects for the Enterprise and New Towns (Scotland) Act 1990, Part I. (See end of Document for details)*

- (b) any reference therein to rights and liabilities of the said Agency or of the said Board is a reference to rights to which the body in question are entitled or as the case may be to liabilities to which the body are subject, whether under the law of the United Kingdom or of any part of the United Kingdom or under the law of any country or territory outwith the United Kingdom; and
  - (c) the same date may be appointed as the first transfer date and as the second transfer date.
- (4) The Secretary of State may by order made by statutory instrument transfer to Scottish Enterprise or Highlands and Islands Enterprise any relevant property, rights or liabilities to which he is entitled or subject.
- (5) For the purposes of subsection (4) above, property, rights or liabilities—
- (a) are relevant if, in the opinion of the Secretary of State, connected with the carrying out by him in Scotland of functions conferred by or under the <sup>M32</sup>Employment and Training Act 1973; and
  - (b) may be transferred whether or not capable of being transferred or assigned by the Secretary of State apart from under that subsection.
- (6) An order under subsection (4) above may make such incidental and transitional provision as the Secretary of State considers necessary or expedient for the purposes of the order.

#### Marginal Citations

M31 1975 c. 69.

M32 1973 c. 50.

### *Dissolution of the Scottish Development Agency and of the Highlands and Islands Development Board: the Transitional Period*

#### **23 Dissolution of the Scottish Development Agency and of the Highlands and Islands Development Board.**

- (1) The Scottish Development Agency shall continue in existence after the first transfer date, and the Highlands and Islands Development Board after the second transfer date, until the body in question are dissolved under subsection (3) below.
- (2) The bodies mentioned in subsection (1) above are, in subsection (3) below and in Schedule 3 to this Act, referred to as the “existing bodies” and the period of either such body’s continued existence as their “transitional period”.
- (3) The Secretary of State may by order made by statutory instrument, after consulting an existing body and their successor, dissolve the existing body on a day specified in the order, as soon as he is satisfied that nothing further remains to be done by that body (whether under the said Schedule 3 or otherwise).
- (4) The transitional provisions and savings contained in Schedule 3 to this Act shall have effect; but those provisions are without prejudice to sections 16 and 17 of the <sup>M33</sup>Interpretation Act 1978 (effect of repeals).

*Status: Point in time view as at 17/09/2003.*

*Changes to legislation: There are currently no known outstanding effects for the Enterprise and New Towns (Scotland) Act 1990, Part I. (See end of Document for details)*

**Marginal Citations**

M33 1978 c. 30.

*Financial provisions*

**24 Financial duties of Scottish Enterprise.**

- (1) After consultation with Scottish Enterprise, the Secretary of State may<sup>F22</sup> . . . determine the financial duties of Scottish Enterprise; and different determinations may be made in relation to different functions and activities of the body.
- (2) The Secretary of State shall give Scottish Enterprise notice of every determination under subsection (1) above; and such a determination may—
  - (a) relate to a period beginning before the date on which it is made;
  - (b) contain incidental or supplemental provisions; and
  - (c) be varied by a subsequent determination under that subsection.

**Textual Amendments**

F22 Words in s. 24(1) repealed (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, Sch. 2 Pt. I para. 100(5), Pt. IV

**25 Finances of Scottish Enterprise.**

- (1) Schedule 2 to this Act shall have effect as regards the finances of Scottish Enterprise.
- [<sup>F23</sup>(1A) In any financial year the net aggregate amount of sums borrowed by Scottish Enterprise and its subsidiaries as general external borrowing shall not exceed the amount specified for that year for the purposes of this section in a Budget Act.
- (1B) In subsection (1A) above—

“general external borrowing” means—

  - (a) in relation to Scottish Enterprise, sums borrowed by it other than sums borrowed from a body corporate which is or was one of its subsidiaries at the time of the loan,
  - (b) in relation to a subsidiary of Scottish Enterprise, sums borrowed by the subsidiary (whether or not a subsidiary of Scottish Enterprise at the time of the loan) other than sums borrowed from Scottish Enterprise, or another subsidiary of Scottish Enterprise,

“net aggregate amount” means the aggregate amount of sums borrowed in the financial year less any repayments made during that year (otherwise than by way of interest) in respect of sums borrowed in that or any other year.]
- (2) . . . . .
- <sup>F24</sup>(3) . . . . .
- <sup>F25</sup>(4) . . . . .

*Status: Point in time view as at 17/09/2003.*

*Changes to legislation: There are currently no known outstanding effects for the Enterprise and New Towns (Scotland) Act 1990, Part I. (See end of Document for details)*

#### Textual Amendments

- F23** S. 25(1A)(1B) inserted (1.4.2000) by 2000 asp 1, s. 8, **Sch. 1 para. 4(1)(2)(a)**; S.S.I. 2000/10, **art. 2(3)**
- F24** S. 25(3) repealed (26.7.1999) by 1999 c. 5, **ss. 1(b), 2(3)** and expressed to be repealed (1.4.2000) by 2000 asp 1, s. 8, **Sch. 1 para. 4(1)(2)(b)**; S.S.I. 2000/10, **art. 2(3)**
- F25** S. 25(2)(4) repealed (1.4.2000) by 2000 asp 1, s. 8, **Sch. 1 para. 4(1)(2)(b)**; S.S.I. 2000/10, **art. 2(3)**

## 26 Finances of Highlands and Islands Enterprise.

- (1) The Secretary of State may <sup>F26</sup> . . . make such grants to Highlands and Islands Enterprise as appear to him to be required to enable the body to meet the expenses it incurs in the exercise of its functions and powers.
- (2) Any grant under subsection (1) above may be subject to such conditions as the Secretary of State thinks fit to impose.
- (3) For the purposes of the exercise of any of its functions or powers, Highlands and Islands Enterprise may, with the consent of the Secretary of State <sup>F26</sup> . . . , borrow money.
- [<sup>F27</sup>(3A) In any financial year the net amount of sums borrowed shall not exceed the amount specified for that year for the purposes of this section in a Budget Act.
- (3B) In subsection (3A) above, “net amount” means the amount of sums borrowed in the financial year less any repayments made during that year (otherwise than by way of interest) in respect of sums borrowed in that or any other year.]
- (4) No security shall be constituted over land owned by Highlands and Islands Enterprise.

#### Textual Amendments

- F26** Words in s. 26(1)(3) repealed (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 100(6)**, Part IV
- F27** S. 26(3A)(3B) inserted (1.4.2000) by 2000 asp 1, s. 8, **Sch. 1 para. 4(3)**; S.S.I. 2000/10, **art. 2(3)**

## 27 Additional financing for Scottish Development Agency.

In paragraph 2 of Schedule 2 to the <sup>M34</sup>Scottish Development Agency Act 1975 (payments to the Agency out of money provided by Parliament), at the end of sub-paragraph (a) but before the word “and” there shall be inserted the following sub-paragraph—

“(aa) in respect of payments by them under sub-paragraph (3A) of paragraph 1 above in reduction of the public dividend capital or repayments by them under sub-paragraph (2) of paragraph 4 below.”.

#### Marginal Citations

- M34** 1975 c. 69.



*Status: Point in time view as at 17/09/2003.*

*Changes to legislation: There are currently no known outstanding effects for the Enterprise and New Towns (Scotland) Act 1990, Part 1. (See end of Document for details)*

## General

### 28 Application to Crown land.

- (1) No power (whether a power of compulsory acquisition or other compulsory power, a power to carry out works or a power of entry) which is conferred by or under this Part shall, except with the consent of the appropriate authority, be exercisable in relation to any land in which there is a Crown interest; that is to say, an interest—
  - (a) belonging to Her Majesty in right of the Crown; or
  - (b) belonging to a government department or held in trust for Her Majesty for the purposes of a government department.
- (2) A consent given for the purposes of subsection (1) above may be given on such conditions as the appropriate authority giving the consent may consider requisite.
- (3) Subject to subsection (1) above, the provisions of this Part shall have effect in relation to land in which there is a Crown interest as they have effect in relation to land in which there is no such interest.
- (4) In this section “the appropriate authority”—
  - (a) in relation to land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, means the Crown Estate Commissioners;
  - (b) in relation to any other land belonging to Her Majesty in right of the Crown, means the government department having the management of that land; and
  - (c) in relation to land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, means that department;

and, if any question arises as to what authority is the appropriate authority in relation to any land, that question shall be referred to the Treasury, whose decision shall be final.

### 29 Service of documents.

- (1) Any document required or authorised by virtue of this Act to be served on any person may be served—
  - (a) by delivering it to him or by leaving it at his proper address or by sending it by post to him at that address; or
  - (b) if the person is a body corporate, by serving it in accordance with paragraph (a) above on the secretary of that body; or
  - (c) if the person is a firm, by serving it in accordance with paragraph (a) above on a partner or a person having the control or management of the firm.
- (2) For the purposes of this section and of section 7 of the <sup>M35</sup>Interpretation Act 1978 (which relates to the service of documents by post) in its application to this section, the proper address of any person on whom a document is to be served shall be his last known address, except that—
  - (a) in the case of service on a body corporate or its secretary, it shall be the address of the registered or principal office of the body;
  - (b) in the case of service on a firm or a partner or a person having the control or management of a firm it shall be the address of the principal office of the firm;and for the purposes of this subsection the principal office of a company registered outside the United Kingdom or of a firm carrying on business outside the United Kingdom is its principal office within the United Kingdom.

*Status: Point in time view as at 17/09/2003.*

*Changes to legislation: There are currently no known outstanding effects for the Enterprise and New Towns (Scotland) Act 1990, Part I. (See end of Document for details)*

- (3) If a person to be served by virtue of this Act with any document by another has specified to that other an address within the United Kingdom other than his proper address (as determined in pursuance of subsection (2) above) as the one at which he or someone on his behalf will accept documents of the same description as that document, that address shall also be treated as his proper address for the purposes of this section and for the purposes of the said section 7 in its application to this section.
- (4) If the name or address of any owner or occupier of land on whom by virtue of this Act any document is to be served cannot after reasonable inquiry be ascertained, the document may be served by—
  - (a) addressing it to him by the description of “owner” or “occupier” of the land (describing it); and
  - (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.
- (5) This section shall not apply to any document in relation to the service of which provision is made by rules of court.
- (6) In this section “secretary”, in relation to a local authority within the meaning of the <sup>M36</sup>Local Government (Scotland) Act 1973, means the proper officer within the meaning of that Act.

**Marginal Citations**

**M35** 1978 c. 30.  
**M36** 1973 c. 65.

**30 Accounts and annual reports.**

- (1) Scottish Enterprise and Highlands and Islands Enterprise shall each keep proper accounts, and other records in relation to the accounts, and shall prepare as respects each financial year a statement of account in such form as the Secretary of State may <sup>F28</sup> . . .determine.
- (2) The statements of account prepared under subsection (1) above shall be submitted to the Secretary of State at such time as he may direct.
- (3) The Secretary of State shall <sup>F29</sup> . . .,transmit to the [<sup>F30</sup>Auditor General for Scotland for auditing] the statements of account submitted under subsection (2) above for the financial year last ended.
- <sup>F31</sup>(4) . . . . .
- (5) Scottish Enterprise and Highlands and Islands Enterprise shall each provide the Secretary of State with such information relating to the exercise (and proposed exercise) of its functions as he may from time to time require, and for that purpose—
  - (a) shall permit any person authorised to do so by the Secretary of State <sup>F32</sup> . . .to inspect and make copies of its accounts, books, documents or papers; and
  - (b) shall provide that person with such explanations in relation to the things inspected as he may reasonably require.

*Status: Point in time view as at 17/09/2003.*

*Changes to legislation: There are currently no known outstanding effects for the Enterprise and New Towns (Scotland) Act 1990, Part 1. (See end of Document for details)*

- (6) As respects, and as soon as possible after the end of, each financial year, Scottish Enterprise and Highlands and Islands Enterprise shall each make to the Secretary of State a report on the exercise of its powers and performance of its functions under this Act.
- (7) Without prejudice to the generality of subsection (6) above, a report under that subsection by—
- (a) Scottish Enterprise or Highlands and Islands Enterprise shall set out the terms of any direction given to the body in question under section 14(1) of this Act during the financial year to which the report relates, unless the direction is given by virtue of section 21(3)(b) of this Act;
  - (b) Highlands and Islands Enterprise—
    - (i) shall include a summary of any proposals submitted by it to the Secretary of State under section 5(1)(b) of this Act during the said financial year and, where he has refused to approve those proposals, a summary of the reasons given by him for so refusing;
    - (ii) shall not disclose any information obtained by virtue of section 11 of this Act without the consent mentioned in subsection (7) of that section.
- (8) The Secretary of State shall lay before each House of Parliament a copy of each report received by him under subsection (6) above.

#### Textual Amendments

- F28** Words in s. 30(1) repealed (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 100(7)**, Pt. IV
- F29** Words in s. 30(3) repealed (1.4.2000) by 2000 asp 1, s. 26, **Sch. 4 para. 9(a)**; S.S.I. 2000/10, **art. 2(3)**
- F30** Words in s. 30(3) substituted (1.4.2000) by 2000 asp 1, s. 26, **Sch. 4 para. 9(a)**; S.S.I. 2000/10, **art. 2(3)**
- F31** S. 30(4) repealed (1.4.2000) by 2000 asp 1, s. 26, **Sch. 4 para. 9(b)**; S.S.I. 2000/10, **art. 2(3)**
- F32** Words in s. 30(5)(a) repealed (1.4.2000) by 2000 asp 1, s. 26, **Sch. 4 para. 9(c)**; S.S.I. 2000/10, **art. 2(3)**

### 31 Application and disapplication of certain provisions.

- (1) Section 9 of the <sup>M37</sup>Industry Act 1975 (the National Enterprise Board and the media) shall apply in relation to Scottish Enterprise as [<sup>F33</sup>if any reference in that section to the Board were a reference to Scottish Enterprise].
- [<sup>F34</sup>(2) Section 21 of the Financial Services and Markets Act 2000 (restrictions on financial promotion) shall not apply to any invitation or inducement (within the meaning of that section) which Scottish Enterprise communicates in the discharge of its functions.]

#### Textual Amendments

- F33** Words in s. 31(1) substituted (retrospective to 6.1.1992) by S.I. 1992/8, **arts. 2, 4**
- F34** S. 31(2) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1, 230**

#### Marginal Citations

- M37** 1975 c. 68.

*Status: Point in time view as at 17/09/2003.*

*Changes to legislation: There are currently no known outstanding effects for the Enterprise and New Towns (Scotland) Act 1990, Part I. (See end of Document for details)*

## 32 Registration of agreements etc.

[<sup>F35</sup>(1) Scottish Enterprise or Highlands and Islands Enterprise, in exercising the powers and duties conferred on it by this Act, may as respects land which does not belong to it enter into an agreement with any person who has an interest in the land (provided that it is an interest which enables the person to bind the land) for the purpose of restricting or regulating, either permanently or during such period as may be prescribed by the agreement, the development or use of the land; and the agreement may be registered either—

- (a) in a case where the land affected by the agreement is registered in the Land Register of Scotland, in that register; or
- (b) in any other case, in the appropriate Division of the General Register of Sasines.

(1A) An agreement under subsection (1) above may contain such incidental and consequential provisions (including financial ones) as appear to the body in question to be necessary or expedient for the purposes of the agreement.]

(2) Any agreement registered in terms of subsection (1) above shall be enforceable at the instance of Scottish Enterprise or Highlands and Islands Enterprise, as the case may be, against persons deriving title to the land from the person who entered into the agreement; but no such agreement shall be enforceable against a third party who in good faith and for value has acquired right (whether completed by infestment or not) to the land prior to the agreement being so registered, or against any person deriving title from that third party.

(3) Notwithstanding the terms of any such agreement as is mentioned in section 8(6) of this Act, it shall be open at any time to the parties to the agreement, or to persons deriving title from the parties, as the case may be, to agree to terminate it; and where an agreement has been registered in terms of subsection (1) above, any subsequent agreement to terminate it shall be registered in the like manner.

(4) Without prejudice to section 22(1)(b) of this Act, any agreement which, but for this Act, would be enforceable at the instance of the Highlands and Islands Development Board under subsection (4) of section 5 of the <sup>M38</sup>Highlands and Islands Development (Scotland) Act 1965 (recording of agreements arranged under subsection (3) of that section) shall be enforceable under subsection (2) above at the instance of Highlands and Islands Enterprise as if it were an agreement arranged by Highlands and Islands Enterprise and registered in terms of subsection (1) above.

### Textual Amendments

**F35** S. 32(1)(1A) substituted for s. 32(1) (4.4.2003) by Title Conditions (Scotland) Act 2003 (asp 9), ss. 113(3), 129(3) (with ss. 119, 121)

### Marginal Citations

**M38** 1965 c. 46.

**Status:**

Point in time view as at 17/09/2003.

**Changes to legislation:**

There are currently no known outstanding effects for the Enterprise and New Towns (Scotland) Act 1990, Part I.