

SCOTTISH LEGISLATION 1994

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INTRODUCTION

Although the crop of 'Scotland only' Acts in 1994 was minute, it includes one of the most important pieces of legislation since 1979, the **Local Government etc. (Scotland) Act**. This voluminous statute will impinge on daily life in Scotland, for the 'etc.' covers a multitude, if not of sins, at least of services and activities. Some aspects of the Act have already been discussed at length in the pages of this journal (Fairley 1995, p. 35 and sources cited there), as to their background, substance and possible implications.

Only Part II of the **Police and Magistrates' Courts Act 1994** extends to Scotland, but it deserves to be noted here, in view of its constitutional importance, and its possible impact on the police service, and because it could well have been enacted as a separate Act.

CHAPTER NUMBER 16: STATE HOSPITALS (SCOTLAND) ACT 1994

This is in effect a mini-consolidation Act, its provisions being drawn from the **National Health Service (Scotland) Act 1978 (c 29)** and the **Mental Health (Scotland) Act 1984 (c 36)**. However, the 1978 Act must be read as amended by the **National Health Service and Community Care Act 1990 (c 19)**, which provides for the setting up of Special Health Boards by order of the Secretary of State. The functions of these boards were stated to be 'the

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exercising of such of his functions under this Act as he may so determine'. Although this could cover anything falling within the Act, it was explained when the Bill was before Parliament that it was to enable him to create a new body to secure health education and promotion in place of the former Scottish Health Education Group.

Thanks to the wide terms of the amendment, he is in fact enabled to set up Special Health Boards in connection with the running of 'state hospitals'. Transatlantic readers should note that this is not the term used to describe ordinary NHS hospitals, but is the statutory euphemism for places for the detention of individuals 'who require treatment under conditions of special security on account of their dangerous, violent or criminal propensities'.

CHAPTER NUMBER 27: INSHORE FISHING (SCOTLAND) ACT 1994

This Act amends the **Inshore Fishing (Scotland) Act 1984 (c 26)** in order to cope with the practice of taking shellfish, especially cockles, by means of tractor and suction dredgers, activities virtually unknown in 1984. Tractor dredging was especially prevalent in the Solway, Cromarty and Dornoch Firths. Although cockle stocks fluctuate for natural reasons, this practice had reduced them to an unusually poor state. Dredging at low tide leaves other aquatic organisms high and dry, so that they may die, and thus it adversely affects the food chain.

Orders made in 1992 and 1993 had already restricted vessel-based fishing, and this Act extends the list of prohibitions that may be ordered by the Secretary of State to include fishing from or by means of any vehicle, or any vehicle of a specified description, or by means of a specified description of equipment.

Penal provisions for infringement of the Act, as now amended, will apply not only to the contravener, but also to anyone who causes or permits the contravention, and to the owner or hirer of the vehicle or equipment and anyone in charge of it. The powers of sea-fishery officers relating to British fishing boats within British fishery limits are extended to vehicles or equipment used in contravention of the Act, and these may be seized by them.

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Further restrictions were imposed, with effect from 1 November 1994, by an order under this Act, on fishing in specified areas for cockles except for the purposes of scientific investigation.

**CHAPTER NUMBER 29: POLICE AND MAGISTRATES'
COURTS ACT 1994**

The Sheehy Inquiry into Police Responsibilities and Rewards (Cm 2280), which had included Scotland in its remit, was followed by a White Paper on Police Reform, which did not apply to Scotland. The incorporation of these Scottish provisions in Part II of this Act, in what was essentially an English Bill, was given a hostile reception by the police at all levels, by the Scottish Peers Association in the House of Lords, and by the opposition parties in the Commons. The Act appears to have tendencies towards both centralisation of power in the hands of the Secretary of State and decentralisation to lower ranks and civilians.

The Scottish provisions are drafted as a series of textual amendments to the **Police (Scotland) Act 1967 (c 77)**. Regular constables (as opposed to special constables) are no longer required by definition to be full-time.

The rank structure is reduced by the abolition of the ranks of deputy chief constable and of chief superintendent. However, a chief constable may, after consulting the local police authority, designate an assistant chief constable to perform his powers and duties if he himself is unable to do so, or there is a vacancy in that office, for up to three months only, unless the Secretary of State agrees otherwise. Civilian staff employed by a police authority will come under the direction and control of the chief constable, except for such independent advisers and administrators as may be agreed between him and the authority (and failing such agreement, as the Secretary of State may determine).

Police authorities will be able to send police officers abroad, to help not only foreign police forces, but also international organisations or institutions or other bodies carrying on policing activities similar to those carried on in Scotland.

Chief constables' annual reports will be made for the financial year, to coincide with their funding period, instead of the calendar year, and will

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consequently be published at the end of July rather than of May. The report will be required to include matters prescribed by the Secretary of State.

Regulations for dealing with 'the conduct and efficiency of constables' will provide for the establishment of procedures which may lead to anything from dismissal to a caution. In the case of superintendents and above, the decision will lie with the police authority. Where constables are dismissed, required to resign, or reduced in rank, they will normally be able to appeal to a new police appeals tribunal instead of to the Secretary of State.

The vogue for fixed-term appointments may be applied to all holding the rank of superintendent or above. This may prove to be expensive, as there may be pressure for pay to include an element to compensate for the risk of non-renewal. It may encourage those with family commitments to temper ambition with the need for security. Political pressures may not be unknown.

The Secretary of State will be able to give directions to police authorities on which the inspectors of constabulary make an adverse report to take steps to remedy inefficiency, actual or potential, including how to allocate their funds to ensure efficiency. The scope of the duties of inspectors of constabulary are themselves enlarged, to include the handling of cases where members of the public are dissatisfied with the manner in which a chief constable has handled a complaint - there being no Police Complaints Authority as in England and Wales.

Finally, the police authority may delegate functions to the chief constable, who in turn may delegate to juniors or to civilian staff.

CHAPTER NUMBER 39: LOCAL GOVERNMENT ETC. (SCOTLAND) ACT 1994

The **Local Government (Scotland) Act 1973 (c 65)**, partially implementing the recommendations of the Wheatley Commission, still stands in the statute book, with the structural provisions - a somewhat distorted version of the Wheatley proposals - repealed, and many provisions in that and other Acts suffering 'minor and consequential amendments'. Accordingly, the **Local Government etc. (Scotland) Act 1994** is not to be seen as a comprehensive code of local government law so much as a patchwork of provisions for implementing the government's theories. Unfortunately, two decades after the Report of the Renton Committee on the Preparation of Legislation,

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Parliamentary counsel are still required to cater more for the convenience of the 'elect o' th' Land' than that of the lieges in general.

Many details remain to be filled out by orders made by the Secretary of State, by statutory instrument subject to annulment by resolution of either House of Parliament.

The Act is divided into Parts, as is common, but Part I, which deals with local government reorganisation, is subdivided into seven Chapters, backed up by six Schedules. Other parts are not subdivided.

The now familiar miscellany of islands areas, regions and districts is replaced by the rather tepid description of 'local government area'.

The three islands area councils remain, but elsewhere there will now be 29 unitary councils, serving populations ranging from under 50,000 in Clackmannan to over 600,000 in Glasgow. For the most part, the new arrangements will come into effect on 1st April 1996, but various provisions are being brought into force by Commencement Orders before then. The election of 'shadow' authorities took place in April 1995, when an ungrateful populace failed to return any council with a majority of Conservative members.

The new councils will consist of a convener and councillors, thus avoiding the need to address presiding ladies and gentlemen as if they were a piece of furniture. However, in the four cities the convener will be known as 'Lord Provost', irrespective of sex.

Although the 1995 election of councillors took place on 6th April, subsequent elections will normally take place on the first Thursday in May, beginning in 1999 and every third year thereafter.

The details of the arrangements for transfer of staff to the new authorities will be elaborated, within the restrictions in the Act protecting employees' interests, by orders. The Secretary of State may designate an existing body or by order establish a new 'advisory body' to consider any increases in remuneration of employees in the run-up to 1st April 1996 or subsequently. The object of this is to discourage 'inappropriate' enhancement of retirement payments or of compensation for loss of office. Action by the Secretary of State to require alteration of remuneration, or to stipulate the deemed rate of remuneration prior to that date, may not be taken after 31st March 1997.

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The provisions for the transfer of property to the new authorities preserve the attachment of the common good to the original pre-1975 areas, except in the four cities, where regard must be had to the interests of all the inhabitants in each of these areas. The Secretary of State will be able to make schemes for dealing with educational endowments by order.

Pre-1975 local government was difficult for the public to understand because of the plethora of ad hoc joint bodies, which obscured the chain of responsibility. The 1973 Act, which removed much ad hocery, is now amended so as to provide for its voluntary return, thereby recognising that the new single tier authorities may in some places be too small to deliver the required services, and may result in an unsatisfactory career structure, particularly for specialist employees. Where two or more authorities have arranged to discharge any functions through a joint committee, they will be able, after affording the making of representations, to apply to the Secretary of State to make an order incorporating it as a joint board, that is as a separate legal personality. Alternatively, the Secretary of State will be able, after consulting the affected authorities, to establish joint boards on his own initiative by order, the draft of which requires to be approved by resolution of each House.

Community councils are to remain, and the council for every local government area will have to prepare a draft decentralisation scheme, with meetings held in different places, local committees, possibly with delegated functions, local offices and information centres. The draft scheme, after at least eight weeks for the public to make representations and any amendments have been made to take account of these representatons or for other reasons, is then adopted by the council.

Each new local authority area is both a valuation area and a rating authority. To protect their independence, assessors and their deputed may be removed only by a resolution passed by not less than two-thirds of the members present and voting after due notice, and also with the consent of the Secretary of State. Valuation rolls will at first be based on existing rolls.

The office of Director of Education disappears, and education committees cease to be mandatory but, where a committee with educational responsibilities is set up, at least half the members must be members of the authority. Members must include one representative of the Church of Scotland and one of the Roman Catholic Church, except in the islands areas. In these areas, two persons, and elsewhere one person, will be appointed

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having regard to the comparative strength of all churches and organised denominational bodies with regular places of worship in their area. Teachers employed by an education authority are not thereby disqualified from being members of the committee, nor is any teacher representation required at all.

The **Education (Scotland) Act 1980 (c44)** is amended to secure co-operation between education authorities, particularly to prevent siblings being split up because of boundary changes.

To maintain the regional nature of structure plans, the Secretary of State will be able to designate structure plan areas extending over the district or part of the district of more than one planning authority. The police areas remain substantially the same as before, with small changes to suit the geography of their new constituent areas. They will be run by joint boards, except in the cases of Fife and of Dumfries and Galloway. Similar continuity features in the arrangements for the fire services, with joint boards everywhere, subject to the same exceptions.

There are provisions for the reconstitution of river purification boards, but this is probably a work of supererogation, given the proposals in the Environment Bill to establish a Scottish Environmental Protection Agency, to be known by the statutory acronym of SEPA.

All local authorities become roads authorities, with responsibility for local roads. Special roads (mainly motorways) and trunk roads all become trunk roads. Boundary bridges carrying public roads over waterways will be the responsibility of one of the two authorities on either side of the bridge, with contributions from the other authority, as agreed. Failing agreement, the Secretary of State will decide.

With the demise of Strathclyde, the former regional council will be replaced as Passenger Transport Authority by the Strathclyde Passenger Transport Authority. Schedule 5 sets out some aspects of the new authority's constitution but leaves details to be elaborated by order.

The post of Director of Social Work is replaced by that of chief social work officer, with qualifications prescribed by the Secretary of State; some authorities may choose to use the former terminology.

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Councils have discretion as to the dividing of their areas into licensing divisions, if at all. They elect the licensing boards' members under existing rules.

The establishment of district courts passes from district and islands councils to the new authorities. The Secretary of State may secure that a JP may hold office in a commission area other than that in which he or she resides.

Provisions of Acts of Parliament, other instruments, byelaws and management rules of limited territorial application continue in force, normally until 31st December 1999, except in the islands areas, but their demise may be postponed, in whole or in part, by order of the Secretary of State.

Although this Act purports to deal with local government, Part II and Schedules 7 to 9 provide for the reorganisation of water and sewerage authorities by the creation of six new quangos. With effect from 1st April 1996 there will be three new water authorities and three new sewerage authorities, for the East, West and North of Scotland. Details of their areas are set out in Schedule 8, and it will be seen that the water and sewerage areas are not co-terminous.

The Secretary of State will appoint the members of these authorities (of whom the chief executive shall in each case be a member) and of the Scottish Water and of the Sewerage Customers Councils, and their respective chairmen and deputy chairmen - no conveners here! The Central Scotland Water Development Board is abolished.

The water and sewerage authorities must produce codes of practice, with which they must 'endeavour to comply', but a contravention will not of itself give rise to criminal or civil liability. There are many further amendments to the **Water (Scotland) Act 1980 (c 45)** and the **Sewerage (Scotland) Act 1968 (c 47)**.

A sewerage authority may authorise the construction of private sewers even if they do not connect with the public system. It must empty septic tanks if it is reasonably practicable and if charges are paid timeously. Formerly the sewerage authority's resolution to do so was required, but all did so, Tayside alone making a small charge.

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Water authorities will be able to supply water outwith their limits of supply, on notifying the 'importing' authority, and to export it furth of Scotland. If it is to be piped, further legislation will probably be necessary, as the present Act applies to Scotland only.

The Children's Hearing system is affected by Part III, which provides for what Tam Dalyell MP called the 'nationalisation' of the Children's Reporter service. The Act creates the 'Scottish Children's Reporter Administration', consisting of from five to eight persons, including its chief officer, who will be the 'Principal Reporter'. In the first instance, he or she will be appointed by the Secretary of State, but subsequently by the Administration itself, with the consent of the Secretary of State. The Administration must see to the provision of suitable accommodation and facilities for children's hearings, which must be dissociated from criminal courts and police stations. An amendment to the **Social Work (Scotland) Act 1968 (c 49)** provides for two or more authorities, with the consent of the Secretary of State, to form a Children's Panel (Joint) Advisory Committee.

In Part IV the opportunity is taken to enact a variety of amendments to a range of statutes, related to, but not necessarily consequential on, the reorganisation of local government.

Scotland is brought into line with England in authorising local authorities to assist voluntary organisations in the provision of information as to individuals' rights and obligations, and of help in asserting or fulfilling these. Citizens' Advice Bureaux and law centres may benefit from this.

The organisation of polling districts for parliamentary elections is formally transferred from the returning officer to the local authority.

Amendments to the **Education (Scotland) Act 1980 (c 44)** are designed to prevent parents from holding up a school closures programme by proposing a change of a school to self-governing status; to protect the interests of denominational schools which may be affected by the creation of the smaller local authorities; and to protect school transport services for children placed in a school in another area, again as a result of reorganisation.

A number of amendments to valuation and rating legislation bring the law closer to, or 'in harmony with', that of England and Wales. Thus, from 1st April 1995, shootings, deer forests, fishings and structures to facilitate the counting of fish are excluded from the valuation roll.

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The 'Free Twopence' rate that could be levied for discretionary expenditure in the interests of a local authority's area or its inhabitants and which, with the introduction of the 'poll tax', remained frozen at the level of the product of that rate in 1988-89, now becomes £3.80 per head of 'the relevant population' (to be determined under regulations). The amount per head may be amended by order of the Secretary of State. The expenditure must now 'bring direct benefit' to the area or its inhabitants, 'commensurate with the expenditure incurred'. Historically, this expenditure has been well within the limits permitted. The Chartered Institute of Public Finance and Accountancy published in 1983 a detailed study of the background and usage of this rate in Scotland and England in **The Free Tuppence**.

Grants to local authorities with special expenditure in relation to ethnic minorities are no longer restricted to areas with Commonwealth immigrants. The Secretary of State may also make 'special grants', subject to the consent of the Treasury and approval by the House of Commons of a 'special grant report' containing such explanation of his decision to make the grant as he 'considers to be desirable'.

Where formerly local authorities were given powers of 'industrial promotion', they are now given powers for the 'promotion of the economic development of their area', subject to restrictions imposed by the Secretary of State.

Exhaustively detailed provisions require the Secretary of State to make schemes for establishing area tourist boards. These will have a considerable degree of autonomy, but nevertheless will not be able to promote tourism outside the UK without express or general written consent of the Secretary of State or of such body as he may direct a board to consult. Representatives of local authorities will not be able to exceed in numbers or in voting rights the 'subscribing members' appointed as members of the 'controlling body of a board'. Subscribing members must not only reside or carry on business in the area of a board, but also carry on or have an interest in activities relating to tourism there, and pay a membership subscription to the board. The Secretary of State will appoint the first members of the board and of the controlling body. It appears that the relevant scheme will set out details for the appointment of subsequent members of the board, which will in turn appoint its controlling body.

As happened in England with the abolition of the Greater London Council and the metropolitan counties, so here there are provisions for the creation of

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residuary bodies to wind up the affairs of the old authorities and eventually of themselves and to dispose of their property, rights and liabilities.

In conclusion, the Act gives the impression of purporting to bring local government 'closer to the people', while reintroducing more ad hocery and more quangos.

REFERENCES

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