

SFT Guidance on powers of Scottish public bodies to generate/procure heat and electricity supplies, and to supply heat and electricity to third parties, and the constraints on those powers.

Appendix 1

Legislation referred to in the Local Authorities section.

LOCAL GOVERNMENT (SCOTLAND) ACT 1973

170A - Production and supply of heat and electricity etc. by local authorities.

(1) Subject to subsections (2) and (3) of this section, a local authority may—

(a) produce heat or electricity or both;

(b) establish and operate such generating stations and other installations as the authority think fit for the purpose of producing heat or electricity or both;

(c) buy or otherwise acquire heat;

(d) use, sell or otherwise dispose of heat produced or acquired, or electricity produced, by the authority by virtue of this section;

(e) without prejudice to the generality of the preceding paragraph, enter into and carry out agreements for the supply by the authority, to premises within or outside the authority's area, of such heat as is mentioned in the preceding paragraphs and steam produced from and air and water heated by such heat.

(2) Nothing in subsection (1) of this section shall be construed as exempting a local authority from the requirements of Part I of the Electricity Act 1989.

(3) Except in such cases as may be prescribed, or in cases where it is produced from waste, or in cases where it is produced from waste, a local authority shall not be entitled to sell electricity which is produced otherwise than in association with heat.

(4) A local authority may—

(a) construct, lay and maintain pipes and associated works for the purpose of conveying heat produced or acquired by the authority by virtue of this section and steam produced from and air and water heated by such heat;

(b) contribute towards the cost incurred by another person in providing or maintaining pipes or associated works which are connected with pipes provided by the authority in pursuance of the preceding paragraph.

(5) Parts I and II of Schedule 3 to the Water (Scotland) Act 1980 (which relate to the breaking open of roads and the laying of communication and supply pipes etc.) shall apply in relation to pipes and associated works provided or to be provided in pursuance of paragraph (a) of the preceding subsection as those Parts apply in relation to water mains and pipes but as if—

(a) ...

(b) for the reference to the special Act in paragraph 2(3) of that Schedule there were substituted a reference to this subsection; and

(c) for any reference to Scottish Water there were substituted a reference to the local authority in question, whether acting alone or jointly with some other person.

(6) It shall be the duty of a local authority by whom an installation for producing heat is operated in pursuance of this section in any financial year to furnish to the Secretary of State, as soon as practicable after the end of that year, such particulars relating to the installation and heat produced at the installation as are prescribed.

(7) In this section “associated works” in relation to pipes, means any of the following connected with the pipes, namely, any valve, filter, stopcock, pump, meter, inspection chamber and manhole and such other works as are prescribed.

(8) Nothing in this section (except the restrictions imposed by subsection (3)) shall be construed as prejudicing any power exercisable by a local authority apart from this section.

(9) Regulations under subsection (3) of this Section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

170B - Provisions supplementary to s.170A.

(1) A local authority who supply or propose to supply heat, hot air, hot water or steam in pursuance of the preceding section may make bylaws—

(a) with respect to the works and apparatus to be provided or used by persons other than the authority in connection with the supply;

(b) for preventing waste and unauthorised use of the supply and unauthorised interference with works and apparatus used by the authority or any other person in connection with the supply;

(c) providing for any specified contravention of the byelaws to be an offence punishable on summary conviction with a fine of such an amount, not exceeding level 3 on the standard scale, as is specified in the byelaws.

(2) Subsections (1) to (7) of section 38 of the Water (Scotland) Act 1980 (which relates to the entry of premises by authorised officers of Scottish Water) shall have effect for the purpose of authorising the entry of premises by authorised officers of a local authority who provide or propose to provide such a supply as is mentioned in the preceding subsection as if for any reference to Scottish Water there were substituted a reference to the local authority and as if in subsection

(1) of that section—

(a) for paragraphs (aa) to (ac) there were substituted the following paragraph—

“(a) for the purpose of installing, examining, adjusting, removing or reading any meter used or to be used by the local authority for measuring the heat, hot air, hot water or steam supplied or to be supplied by that authority;”;

(b) for the words from “this Act” onwards in paragraph (b) there were substituted the words “bylaws in force by virtue of section 170B of the Local Government (Scotland) Act 1973”;

and

(c) for the words “this Act” in paragraphs (c) and (d) there were substituted the words “section 170A of that Act”.

(3) Regulations may repeal or alter subsection (1) of this section or any provision of bylaws in force by virtue of that subsection and may make any modification of the preceding subsection which the Secretary of State considers is appropriate in consequence of the repeal or alteration.

(4) An instrument containing regulations under subsection (3) of this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(5) Section 80 of the Health and Safety at Work etc. Act 1974 (which among other things provides that regulations under subsection (1) of that section may repeal or modify any provision to which that subsection applies if it appears to the authority making the regulations that it is expedient to do so in consequence of any provision made by or under Part I of that Act) shall have effect as if the provisions to which subsection (1) of that section applies included of this section and bylaws in force by virtue of this section.

6) The accounts of a local authority by whom expenditure is incurred under any of the provisions of the preceding section and this section shall include a separate account of that expenditure and of any income connected with functions conferred on the authority by those provisions.”

THE SALE OF ELECTRICITY BY LOCAL AUTHORITIES (SCOTLAND) REGULATIONS 2010

2. Exception from the restriction on selling electricity in section 170A(3) of the Local Government (Scotland) Act 1973

For the purpose of section 170A(3) of the Local Government (Scotland) Act 1973, a local authority shall be entitled to sell electricity produced from the following sources—

(a) wind;

(b) solar;

(c) aerothermal;

(d) geothermal;

(e) hydrothermal and ocean energy;

(f) hydropower;

(g) biomass;

- (h) landfill gas;
- (i) sewage treatment plant gas; and
- (j) biogases.

WATER (SCOTLAND) ACT 1980

Schedule 3

Provisions as to breaking open streets and laying communication and supply pipes

Part I - Provisions as to breaking open streets, etc.

1. Power to break open streets.

Subject to the provisions of this Part of this Schedule, Scottish Water may, for the purpose of laying, constructing, inspecting, repairing, altering, renewing or removing mains, service pipes, plant or other works, break open a road, and any cellar or vault below any road, and any sewer, drain or tunnel in or under any such road, and may remove and use the soil or other materials in or under any such road:

Provided that it shall in the exercise of the powers conferred by this paragraph cause as little inconvenience and do as little damage as may be, and for any damage done shall pay compensation to be determined, in case of dispute, by arbitration.

2.— Protection for railway companies, navigation authorities, tramway undertakers, etc.

(1) Except in cases of emergency arising from defects in existing pipes, plant or works, a private road under the control or management of, or maintainable by, a railway company or navigation authority shall not be broken open without their consent, but that consent shall not be unreasonably withheld, and any question whether or not consent is unreasonably withheld shall be referred to and determined by the Secretary of State.

(2) Where Scottish Water proposes to break open any length of road which forms a level-crossing belonging to persons not being a railway company or navigation authority and which is not under the control or management of a railway company or navigation authority, it shall give to those persons the like notice as is referred to in section 114 of the New Roads and Street Works Act 1991 and, if and in so far as the proposed work is likely to affect the structure of any bridge or other works belonging to those persons, shall carry out the work to the reasonable satisfaction of the engineer or other authorised officer acting on behalf of those persons in accordance with plans approved by him.

Any dispute arising under this sub-paragraph between Scottish Water and those persons shall be determined by arbitration.

(3) For the protection of persons entitled to the benefit of section 32 of the Tramways Act 1870 (which relates to the rights of authorities and companies, etc., to open roads) that section shall be construed as applying to operations authorised by the special Act, and in the said section as so applied any reference to a tramway shall be construed as including a reference to a trolley vehicle system.

(4) Nothing contained in this paragraph for the protection of owners of level-crossings shall affect the decision of any question which may arise as to the legality of the construction of, or the right to continue, any level-crossing.

PART II - Provisions as to laying communication and supply pipes, etc.

4.— Power to lay service pipes, etc.

(1) Scottish Water may in any road lay such service pipes with such stopcocks and other fittings as it deems necessary for supplying water to premises, and may from time to time inspect, repair, alter or renew and may at any time remove any service pipe laid in a road whether by virtue of this section or otherwise:

Provided that before exercising any of the powers conferred by this paragraph, Scottish Water shall, except in cases of emergency arising from defects in any existing plant or works, give such notice, to

(i) where the road is a public road, the roads authority; and

(ii) in any other case, the authority or person responsible for the maintenance of the road, or, if no authority or person is so responsible, to the owners of the solum of the road as would require to be given by an undertaker under section 114 of the New Roads and Street Works Act 1991 (notice of starting date of works) in accordance with that section and with section 156 of that Act (service of notice)

(2) Where a service pipe has been lawfully laid in, on or over any land not forming part of a road, Scottish Water may from time to time enter upon that land and inspect, repair, alter, renew or remove the then existing pipe or lay a new pipe in substitution therefor, but shall pay compensation for any damage done by them.

Any dispute as to the amount of compensation to be paid under this sub-paragraph shall be determined by arbitration.

5. Laying of supply pipes, etc.

An owner or occupier of any premises who desires to have a supply of water for his domestic purposes from the waterworks of Scottish Water shall, subject as hereinafter provided, comply with the following requirements:

(a) he shall give to Scottish Water 14 days' notice of his intention to lay the necessary supply pipe; and

(b) he shall lay the supply pipe at his own expense, having first obtained, as respects any land not forming part of a road, the consent of the owners and occupiers thereof:

Provided that, where any part of the supply pipe is to be laid in a road, he shall not himself break open the road or lay that part of the pipe.

6.— Laying of communication pipes, etc.

(1) Upon receipt of such a notice as is referred to in the last foregoing paragraph, Scottish Water shall, within 14 days after the person by whom the notice was given has laid a supply pipe in accordance with the provisions of the last foregoing paragraph, lay the necessary communication pipe and any part of the supply pipe which is to be laid in a road and shall connect the communication pipe with the supply pipe:

Provided that, where any part of the supply pipe is to be laid in a road, it may elect to lay a main in the street for such distance as it thinks fit in lieu of a supply pipe, and in that case shall lay a communication pipe from that main and connect it with the supply pipe.

(2) The whole, or such part as Scottish Water may think fit, of the expenses reasonably incurred by Scottish Water in executing the work which it is required or authorised by this paragraph to execute shall be repaid to it by the person by whom the notice was given and may be recovered by it from him:

Provided that, if under the provisions of this paragraph Scottish Water lays a main in lieu of part of a supply pipe, the additional cost incurred in laying a main instead of a supply pipe shall be borne by them.

(3) Notwithstanding anything in the foregoing provisions of this paragraph, where such a notice as aforesaid is given to Scottish Water, it may, within seven days after the receipt thereof, require the person giving the notice either to pay to it in advance the cost of the work, as estimated by its engineer, or to give security for payment thereof to its satisfaction, and, where it makes such a requirement, the period of 14 days referred to in sub-paragraph (1) of this paragraph shall not commence to run until the requirement has been complied with.

If any payment so made to Scottish Water exceeds the expenses which under the foregoing provisions of this paragraph it would be entitled to recover from the person giving the notice, the excess shall be repaid by it, and, if and so far as those expenses are not covered by the payment, it may recover the balance from him.

7.— Power of authority to require separate service pipes.

(1) Subject to the provisions of this paragraph Scottish Water may require the provision of a separate service pipe for each house supplied, or to be supplied by it, with water.

(2) If, in the case of a house already supplied with water but not having a separate service pipe, Scottish Water gives notice to the owner of the house, requiring the provision of such a pipe, the owner shall within

such period of not less than three months as the notice shall specify lay so much of the required pipe as will constitute a supply pipe and is not required to be laid in a road, and Scottish Water shall, within 14 days after he has done so, lay so much of the required pipe as will constitute a communication pipe or a supply pipe to be laid in a road and make all necessary connections.

(3) If an owner upon whom a notice has been served under the last foregoing sub-paragraph fails to comply therewith, Scottish Water may itself execute the work which he was required to execute.

(4) The expenses reasonably incurred by Scottish Water in executing the work which it is required by sub-paragraph (2) to execute, or which it is empowered by the last foregoing sub-paragraph to execute, shall be repaid to it by the owner of the house and may be recovered by it from him, but without prejudice to the rights and obligations as between themselves, of the owner and occupier of the house.

(5) Where two or more houses are being supplied with water by a single service pipe, Scottish Water shall not require the provision of separate service pipes for those houses until—

(a) the existing supply pipe becomes so defective as to require renewal, or is no longer sufficient to meet the requirements of the houses; or

(b) the houses are, by structural alterations to one or more of them, converted into a larger number of houses; or

(c) the owner or occupier of any of the houses has interfered with, or allowed another person to interfere with, the existing service pipe or the stop-cock fixed to that pipe and has thereby caused the supply of water to any of the houses to be interfered with; or

(d) Scottish Water has reasonable grounds to believe that such interference as is mentioned in (c) above is likely to take place.

8.— ...

9.— Provisions as to the position of stopcocks.

(1) On every service pipe laid after 16th May 1946 Scottish Water shall, and on every service pipe laid before that date Scottish Water may, fit a stopcock enclosed in a covered box, or pit, of such size as may be reasonably necessary.

(2) Every stopcock fitted on a service pipe after 16th May 1946 shall be placed in such position as Scottish Water deems most convenient:

Provided that—

(a) a stopcock in private premises shall be placed as near as is reasonably practicable to the road from which the service pipe enters those premises; and

(b) a stopcock in a road shall, after consultation with the roads authority concerned, be placed as near to the boundary thereof as is reasonably practicable.

WATER (SCOTLAND) ACT 1980

38.— Entry of premises.

(1) Subject to the provisions of this section, an authorised officer of Scottish Water shall, on producing if so required some duly authenticated document showing his authority, have a right to enter any premises at all reasonable hours—

(aa) where the conditions set out in subsection (2) of section 24B are satisfied in relation to the premises, for the purpose of carrying out any survey or tests to determine—

(i) whether the carrying out of any works by virtue of paragraph (a) or (b) of subsection (4) of that section is practicable,

(ii) whether it is necessary or expedient for any purpose connected with the carrying out of any works by virtue of either of those paragraphs for any other works to be carried out, or

(iii) how any works specified in that subsection should be carried out;

(ab) for the purpose of inspecting, examining or testing—

(i) any meter which is on the premises and which is used by Scottish Water for measuring the quantity of water supplied, or

(ii) any pipes or apparatus installed in the course of any works which were carried out for any purpose which is connected with the installation, connection, testing, maintenance or repair of any such meter;

(ac) for the purpose of ascertaining from any such meter the quantity of water supplied to the premises;

(b) for the purpose of ascertaining whether there is or has been on or in connection with the premises any contravention of the provisions of this Act or of any byelaws made thereunder;

(c) for the purpose of ascertaining whether or not circumstances exist which would authorise Scottish Water to take any action or execute any work under this Act or any such byelaws;

(d) for the purpose of taking any action or executing any work authorised or required by this Act or any such byelaws to be taken or executed by Scottish Water.

(2) Admission to any premises, not being a factory within the meaning of the Factories Act 1961 or a place in which persons are employed otherwise than in domestic service, shall not be demanded as of right unless 24 hours' notice of the intended entry has been given to the occupier.

(3) If it is shown to the satisfaction of the sheriff, or a justice having jurisdiction in the place, on a sworn information in writing—

(a) that admission to any premises which any person is entitled to enter by virtue of such a right of entry has been refused to that person, or that refusal is apprehended, or that the premises are unoccupied, or the occupier is temporarily absent, or that the case is one of urgency, or that the application for admission would defeat the object of the entry; and

(b) that there is reasonable ground for entry into the premises for any purpose for which the right of entry is exercisable;

the sheriff or justice may by warrant under his hand authorise that person to enter the premises if need be by force:

Provided that such a warrant shall not be issued unless the sheriff or justice is satisfied either that notice of intention to apply for a warrant has been given to the occupier, or that the premises are unoccupied, or that the occupier is temporarily absent, or that the case is one of urgency, or that the giving of such notice would defeat the object of the entry.

(4) Any person entitled to enter any premises by virtue of such a right of entry, or of a warrant issued under this section, may take with him such other persons as may be necessary, and on leaving any unoccupied premises which he has entered by virtue of such a warrant shall leave them as effectually secured against trespassers as he found them.

(5) Every warrant granted under this section shall continue in force until the purpose for which the entry is necessary has been satisfied.

(6) If any person who, in compliance with any of the provisions of this Act or with a warrant issued thereunder, is admitted into any premises makes use of or discloses to any person any information obtained by him there with regard to any manufacturing process or trade secret, he shall, unless such use or disclosure was made in the performance of his duty, be liable in respect of each offence—

(a) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months or to both such fine and imprisonment;

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.

(7) Any person who wilfully obstructs any person upon whom a right of entry has been conferred by any of the provisions of this Act or by a warrant issued under this section shall in respect of each offence be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(8) This section, except subsection (6), shall not apply to any right conferred by section 93.

(9) This section does not apply in relation to the purposes mentioned in section 76M(1).

CLIMATE CHANGE (SCOTLAND) ACT 2009 – Part 4

44 Duties of public bodies relating to climate change

(1) A public body must, in exercising its functions, act—

(a) in the way best calculated to contribute to the delivery of the targets set in or under Part 1 of this Act;

(b) in the way best calculated to help deliver any programme laid before the Scottish Parliament under section 53;

(c) in a way that it considers is most sustainable.

(2) In this Part, a “public body” means a Scottish public authority within the meaning of section 3(1)(a) of the Freedom of Information (Scotland) Act 2002 (asp 13).

(3) The Scottish Ministers may, if they consider it appropriate to do so, by order, make further provision relating to the imposition on relevant public bodies of duties relating to climate change.

(4) The duties imposed by subsection (1) and any duty imposed by virtue of an order under subsection (3) are referred to in this Act as “climate change duties”.

(5) In this Part, a public body which has climate change duties under subsection (1) or by virtue of subsection (3) is a “relevant public body”.

(6) An order under subsection (3) may in particular—

(a) impose climate change duties on—

(i) all public bodies;

(ii) public bodies of a particular description;

(iii) individual public bodies;

(b) impose different climate change duties on different public bodies or descriptions of public body;

(c) remove climate change duties.

(7) Before laying a draft of a statutory instrument containing an order under subsection (3) before the Scottish Parliament, the Scottish Ministers must consult, in so far as reasonably practicable, the persons mentioned in subsection (8).

(8) Those persons are—

(a) such associations of local authorities; and

(b) such other persons,

as the Scottish Ministers consider appropriate.

(9) The Scottish Ministers must co-operate with a relevant public body to help that body comply with its climate change duties.

45 Guidance to relevant public bodies

(1) The Scottish Ministers must give guidance to relevant public bodies in relation to climate change duties and those bodies must have regard to such guidance.

(2) Before giving guidance under subsection (1), the Scottish Ministers must consult, in so far as reasonably practicable, the persons mentioned in subsection (3).

(3) Those persons are—

(a) such associations of local authorities; and

(b) such other persons,

as the Scottish Ministers consider appropriate.

(4) The Scottish Ministers may vary or revoke guidance given under this section and where guidance is varied to a substantial extent, subsections (2) and (3) apply.

(5) The Scottish Ministers must publish any guidance given under this section.

46 Reporting on climate change duties

(1) The Scottish Ministers may, by order, make provision—

(a) requiring relevant public bodies to prepare reports on compliance with climate change duties;

(b) requiring any relevant public body found, following an investigation under section 48, to be failing to comply with its climate change duties, to prepare a report on the actions it has taken, is taking or intends to take to secure future compliance with those duties;

(c) subject to subsection (2), setting out what information reports must contain;

(d) setting out the form and manner of reports;

(e) setting out the period within which reports must be sent to the Scottish Ministers.

(2) A report required by virtue of subsection (1)(a) must, in particular, contain information relating to how—

(a) procurement policies of relevant public bodies; and

(b) procurement activity by relevant public bodies,

have contributed to compliance with climate change duties.

(3) An order under subsection (1) may in particular—

(a) require two or more relevant public bodies to prepare a joint report in relation to compliance with one or more climate change duties; and

(b) require those bodies to co-operate with each other for the purpose of preparing that report.

47 Appointment of monitoring body

(1) The Scottish Ministers may, by order, designate one or more persons or bodies to monitor whether relevant public bodies are—

(a) complying with climate change duties;

(b) having regard to any guidance given under section 45.

(2) In this Part, a person or body designated under subsection (1) is the “monitoring body”.

48 Investigations

(1) The monitoring body may carry out an investigation into—

(a) a relevant public body's compliance with climate change duties;

(b) whether a relevant public body is having regard to guidance given under section 45.

(2) The monitoring body must carry out an investigation if the Scottish Ministers direct it to do so.

49 Investigations: investigators' powers

(1) In this section an “*investigator*” means—

(a) the monitoring body;

(b) a person authorised by the monitoring body for the purpose of carrying out investigations.

(2) An investigator may use the powers set out in subsections (3) to (5) if the investigator considers that it is necessary to do so for the purposes of or in connection with an investigation.

(3) An investigator may, by notice in writing, require any relevant public body to provide any relevant document or relevant information in the possession, or under the control, of the relevant public body.

(4) An investigator may require any person who possesses or controls any document or information referred to in subsection (3) to provide an explanation of the document or information.

(5) An investigator may take copies of, or extracts from, any document or information produced in accordance with subsection (3).

(6) Nothing in this section authorises an investigator to require the disclosure of anything which a person would be entitled to refuse to disclose on grounds of confidentiality in proceedings in the Court of Session.

50 Reporting by monitoring body

(1) The Scottish Ministers may direct the monitoring body to prepare a report relating to—

(a) the monitoring body's activities under this Part;

(b) investigations carried out by the monitoring body;

(c) its use of resources in carrying out its functions under this Part;

(d) any other matters the Scottish Ministers may direct.

(2) The report may include information relating to a continuing investigation only if the Scottish Ministers direct that information to be included.

(3) The monitoring body must send the report to the Scottish Ministers.

(4) The Scottish Ministers must lay the report before the Scottish Parliament.

51 Guidance to monitoring body

(1) The monitoring body must have regard to any guidance given by the Scottish Ministers to it in relation to the exercise of its functions under this Part.

(2) Before giving guidance under subsection (1), the Scottish Ministers must consult, in so far as reasonably practicable, the persons mentioned in subsection (3).

(3) Those persons are—

(a) the monitoring body; and

(b) such other persons,

as the Scottish Ministers consider appropriate.

(4) The Scottish Ministers may vary or revoke guidance given under this section and where guidance is varied to a substantial extent, subsections (2) and (3) apply.

(5) The Scottish Ministers must publish any guidance given under this section.

52 Power to direct monitoring body

- (1) The Scottish Ministers may give directions to the monitoring body relating to the exercise of its functions under this Part.
- (2) The Scottish Ministers may vary or revoke a direction given under this section.
- (3) The monitoring body must comply with a direction given under this section.

EDUCATION (SCOTLAND) ACT 1980

17.— Provision, maintenance and equipment of schools and other buildings.

- (1) Subject to subsection (6) below, it shall be the duty of an education authority in the performance of their functions under sections 1 to 6 of this Act, to provide for their area, sufficient accommodation in public schools (whether day schools or boarding schools), and other educational establishments under their management to enable them to perform their said functions.
- (2) In any case where an education authority are satisfied, whether upon representations made to them by any church or denominational body acting on behalf of the parents of children belonging to such church or body or otherwise, that a new school is required for the accommodation of children whose parents are resident within the area of the authority, regard being had to the religious belief of such parents, it shall be lawful for the education authority to provide a new school.
- (3) Subject to subsection (6) below, an education authority shall maintain and keep efficient every public school, and other educational establishment under their management, and shall from time to time provide such additional accommodation as may be necessary to enable them to perform their functions under sections 1 to 6 of this Act.
- (4) An education authority may, for the purposes of their duty under this section, provide, alter, improve, enlarge, equip and maintain schools, and other educational establishments outwith as well as within their area.
- (5) An education authority may provide, alter, improve, enlarge, equip, maintain and furnish houses and hostels, with such outbuildings and gardens as they think expedient, for teachers and other officers employed by them (whether or not employed in or about an educational establishment).
- (6) Subsections (1) and (3) above shall have effect as regards further education only to the extent that the education authority is under a duty to do anything under the said sections 1 to 6.

HOUSING (SCOTLAND) ACT 1987

2.— Powers of local authority to provide housing accommodation.

(1) A local authority may provide housing accommodation—

(a) by the erection of houses on any land acquired or appropriated by them;

(b) by the conversion of any buildings into houses;

(c) by acquiring houses;

(d) by altering, enlarging, repairing or improving any houses or other buildings which have, or a right or interest in which has, been acquired by the local authority.

(2) For the purpose of supplying the needs for housing accommodation in its area, a local authority may exercise any of its powers under subsection (1) outside that area.

(3) A local authority may alter, enlarge, repair or improve any house provided by them under subsection (1).

(4) For the purposes of this Part the provision of housing accommodation includes the provision

of—

(a) a cottage with a garden of not more than one acre;

(b) a hostel.

(5) In this section “hostel” means —

(a) in relation to a building provided or converted before 3 July 1962, a building in which is provided, for persons generally or for any class or classes of persons, residential accommodation (otherwise than in separate and self-contained dwellings) and board;

(b) in relation to a building provided or converted on or after 3 July 1962, a building in which is provided, for persons generally or for any class or classes of persons, residential accommodation (otherwise than in houses) and either board or common facilities for the preparation of food adequate to the needs of those persons or both .

(6) Nothing in this Act shall be taken to require (or to have at any time required) a local authority itself to acquire or hold any houses or other land for the purposes of this Part.

LOCAL GOVERNMENT IN SCOTLAND ACT 2003

20 Power to advance well-being

(1) A local authority has power to do anything which it considers is likely to promote or improve the well-being of—

(a) its area and persons within that area; or

(b) either of those.

(2) The power under subsection (1) above includes power to—

(a) incur expenditure,

(b) give financial assistance to any person,

(c) enter into arrangements or agreements with any person,

(d) co-operate with, or facilitate or co-ordinate the activities of, any person,

(e) exercise on behalf of any person any functions of that person, and

(f) provide staff, goods, materials, facilities, services or property to any person.

(3) The power under subsection (1) above may be exercised in relation to, or for the benefit of—

(a) the whole or any part of the area of the local authority;

(b) all or some of the persons within that area.

(4) The power under subsection (1) above includes power to do anything—

(a) in relation to, or for the benefit of, any persons or place outwith the area of the local authority; or

(b) in any such place, if the authority considers that doing so is likely to achieve the purpose set out in that subsection.

(5) The Scottish Ministers may, by order, extend the meaning of “well-being” for the purposes of this section.

(6) Such an order shall be made by statutory instrument but not unless a draft of it has been laid before and approved by resolution of the Scottish Parliament.

(7) Before laying such a statutory instrument, the Scottish Ministers shall consult such associations of local authorities as they think fit.

LOCAL GOVERNMENT AND PLANNING (SCOTLAND) ACT 1982

14.— Islands or district council's duties in relation to the provision of recreational, sporting, cultural and social facilities and activities.

(1) Subject to subsection (2) below and to section 19 of this Act, a local authority shall ensure that there is adequate provision of facilities for the inhabitants of their area for recreational, sporting, cultural and social activities.

(2) Without prejudice to section 63 of the Countryside (Scotland) Act 1967 (which empowers water authorities to provide recreational facilities), in relation to the provision of facilities for the recreational or sporting use of—

(a) a reservoir (within the meaning of the Reservoirs Act 1975); or

(b) an inland waterway (within the meaning of the said Act of 1967) or any part of such waterway, which is managed and operated by Scottish Water, no duty is imposed by subsection (1) above and no power conferred by sections 15 to 18 of this Act.

LOCAL GOVERNMENT (SCOTLAND) ACT 1973

79. Provision of offices, etc.

A local authority may acquire or provide and furnish and maintain halls, offices and other buildings, whether within or without the area of the authority, to be used for the purpose of transacting the business of the authority or the business of any other body for which the authority are required or authorised by or under any enactment to provide accommodation, or for the purpose of public meetings or assemblies.

In relation to new local authorities, section 79 reads:

79. Provision of offices, etc.

A local authority may acquire land by agreement or compulsorily and may acquire or provide and furnish and maintain halls, offices and other buildings, whether within or without the area of the authority, to be used for the purpose of transacting the business of the authority and for those purposes sections 70 to 72, section 74 and sections 77 and 78 above shall apply.

LOCAL GOVERNMENT (SCOTLAND) ACT 1973

69.— Subsidiary powers of local authorities.

(1) Without prejudice to any powers exercisable apart from this section but subject to the provisions of this Act and any other enactment passed before or after this Act, a local authority shall have power to do anything (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions.

(2) A local authority shall not by virtue of this section raise money, whether by means of rates or borrowing, or lend money except in accordance with the enactments relating to those matters respectively.

(3) Without prejudice to section 53 of the Countryside (Scotland) Act 1967 (contributions by or to local authorities), two or more local authorities may make arrangements for defraying any expenditure incurred by one of them in exercising any functions exercisable by both or all of them.

LOCAL GOVERNMENT (SCOTLAND) ACT 1975

Schedule 3 - borrowing and lending by local authorities and certain other bodies and certain of their funds

1.—

(1) Without prejudice to section 69 of the Act of 1973 (subsidiary powers of local authorities), a local authority may borrow such sums as may be required for any of the following purposes—

(a) for acquiring any land which the authority have power to acquire;

(b) for erecting any building which the authority have power to erect;

(c) for the execution of any permanent work or the provision of any plant or the doing of any other thing which the authority have power to execute, provide or do and which involves expenses of a capital nature or for the payment of any sum of a capital nature;

(d) for the purpose of lending to a relevant authority or to any community council established for the area of the local authority or any part thereof under Part IV of the Act of 1973;

(e) for any other purpose for which the authority are authorised under any enactment to borrow.

(2) With the consent of the Secretary of State, a local authority may borrow, on such terms and conditions as to repayment as the Secretary of State may in so consenting allow, such sums as are required to meet expenses, other than expenses to which sub-paragraph (1) above relates, which the authority have power to incur in the exercise of any of their functions (excluding functions relating to a public utility undertaking);

but the Secretary of State shall give such consent only if satisfied that the expenses are of such a nature that they should be met by such borrowing.

(3) A local authority may borrow such sums as are necessary in order to provide working capital or to meet any other expenses, not being expenses of a capital nature, required for the purposes of any public utility undertaking carried on by the authority:

Provided that—

(a) the total sums borrowed under this sub-paragraph and for the time being outstanding shall not, except with the consent of the Secretary of State, exceed an amount representing one half of the gross revenue of the undertaking for the immediately preceding financial year;

(b) any sum borrowed under this sub-paragraph to defray expenses shall be repaid as soon as reasonably practicable and in any case before the expiration of the period within which money borrowed to meet such expenses is ordinarily repaid in the case of such an undertaking, so however that any sum borrowed under this sub-paragraph shall be repaid before the expiration of two years from the date of borrowing, unless the consent of the Secretary of State is obtained to repayment thereof being spread over a longer period, and such consent may be given subject to such conditions as the Secretary of State may determine.

(5) In this paragraph "*public utility undertaking*" means a transport or other revenue-producing undertaking of a local authority.

2.—

(1) Where a local authority are authorised under a statutory borrowing power to borrow money, they may raise the money—

(a) by mortgage,

(b) by overdraft from a bank,

(c) by the issue of stock,

(d) by the issue of bonds,

(e) by the issue of bills,

(f) by an agreement entered into with the Public Works Loan Commissioners under section 2 of the Public Works Loans Act 1965, or

(g) by any other means approved by the Secretary of State with the consent of the Treasury.

(2) The powers conferred by this paragraph shall be exercisable subject to and in accordance with the following provisions of this Schedule; and a local authority having power under a local enactment to borrow money by way of any method referred to in sub-paragraph (1) above shall not exercise that power in accordance with the provisions of that enactment.

3.—

A local authority may borrow by way of temporary loan or overdraft from a bank or otherwise any sums which they may temporarily require—

(a) for the purpose of defraying expenses (including the payment of sums due by them to meet the expenses of other authorities) pending the receipt of revenues receivable by them in respect of the year in which those expenses are chargeable;

(b) for the purpose of the raising of a loan in the exercise of any statutory borrowing power.

4.—

The power of a local authority to borrow money by any means includes power to raise money by those means outside the United Kingdom or in a foreign currency, but only with the consent of, and in accordance with any conditions specified by, the Treasury.

5.—

(1) The Secretary of State may by regulations made with the consent of the Treasury—

(a) prescribe the form of any mortgage to be entered into for the purpose of any borrowing by a local authority,

(b) regulate the issue of stocks and bonds or the creation of any other security for any such purpose, including the terms on which they are to be issued or created,

(c) regulate the manner of transfer, dealing with and redeeming any mortgage created, or stocks or bonds issued or any other security created for any such purpose,

(d) apply all or any of the provisions of sections 194 and 197 of the Act of 1973 (execution of deeds and inspection and deposit of documents) with or without modifications, to any such mortgage, stock, bonds or other security,

(dd) make provision for the custody and, where appropriate, eventual destruction of documents relating to any such stocks or bonds,

(e) make such incidental, consequential and supplemental provision as appears to the Secretary of State to be necessary or proper for bringing the regulations into operation and giving them full effect.

(2) Different provisions may be made under this paragraph for securities of different classes.

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

6.—

(1) A local authority may borrow by the issue of bills, payable within twelve months from the date of issue—

(a) any sum which they are authorised to borrow under a statutory borrowing power; or

(b) such sums as may be required for the purpose of defraying expenses (including those payable by them to meet the expenses of other local authorities) pending the receipt of revenues receivable by them in respect of the year in which those expenses are chargeable.

(2) The aggregate of the amount outstanding on bills issued by a local authority under sub-paragraph (1) above shall not exceed—

(a) a sum equal to such proportion of the authority's estimated gross income from rates, the council tax and the council water charge, during the current year as may be prescribed by an order made by the Treasury; or

(b) if no such proportion is so prescribed, a sum equal to one-fifth of the authority's estimated gross income as aforesaid.

(3) A local authority shall not borrow by the issue of bills in any year during which the authority's estimated gross income as aforesaid does not exceed £3 million or such other sum as may be prescribed by an order made by the Treasury.

(4) A statutory instrument containing an order under this paragraph shall be subject to annulment in pursuance of a resolution of either House of Parliament.

7.—

A local authority may issue bonds transferable by delivery (with or without endorsement) and other securities so transferable, but only with the consent of, and in accordance with any conditions specified by, the Treasury.

8.—

(1) Subject to the provisions of this paragraph and notwithstanding anything in any other enactment, all money borrowed under any statutory borrowing power by a local authority shall be secured upon the whole funds, rates and revenues of the authority and not otherwise; and all money borrowed by a local authority by whatever method shall be deemed to have the same charge and security and shall rank *pari passu*.

In this sub-paragraph references to sums borrowed by a local authority shall be deemed to include references to any sum which was borrowed by some other authority, and which the local authority in consequence of a transfer of functions or otherwise are liable to repay to the creditors.

(2) The interest and dividends for the time being payable in respect of money so borrowed by a local authority shall be the first charge on the rates and revenues comprising the security for the said money.

(3) Sub-paragraphs (1) and (2) above shall not apply in the case of money borrowed for the purpose of the common good, nor shall the security created by those sub-paragraphs include the common good or the revenues thereof.

(4) Sub-paragraphs (1) and (2) above shall not apply in the case of money borrowed by a local authority for the purposes of any trust under any deed of trust or other document, nor shall the security created by those sub-paragraphs include the funds held under any such trust.

9.—

Two or more local authorities may combine to exercise their powers of borrowing under this Schedule jointly, and where they do so—

(a) any limit on the amount which each authority may borrow shall apply to the amount which each authority receive from the joint loan;

(b) paragraph 8 above shall apply to the money so borrowed as if references to a local authority were references to the local authority by whom the money is received.

10.—

(1) A local authority may lend to another authority mentioned in sub-paragraph (2) below, on such terms as may be agreed between them, such sums as that other authority may require for any purpose for which that other authority are authorised to borrow money by or under this Act or any other enactment; and they may also lend such sums as they consider appropriate to a community council established for their area or any part thereof, on such terms as may be agreed between them.

(2) The authorities to whom sums may be lent under sub-paragraph (1) above are any authority to which section 118 of the Act of 1973 applies or any other public authority approved by the Secretary of State for the purposes of this paragraph.

11.—

(1) A local authority may make loans to a harbour authority for a harbour wholly or partly situated within the area of the local authority, on such terms as may be agreed between them, for any purpose for which the harbour authority are authorised to borrow money.

(2) In this paragraph "*harbour*" and "*harbour authority*" have the same meanings as in the Harbours Act 1964.

12.—

(1) Subject to the following provisions of this Schedule, a local authority shall, as from 1st April 1996, establish a fund (“the loans fund”) which shall be applicable to all money borrowed by the authority and the redemption or repayment thereof and the payment of interest or dividends thereon and shall be part of the general fund of the authority; and the loans fund shall be administered in accordance with paragraphs 13 to 21 below.

(1A) Sub-paragraph (1) above, so far as it relates to the establishment of a loans fund, does not apply to the councils of Orkney Islands, Shetland Islands and Western Isles, whose loans funds will continue in existence.

(2) A loans fund shall not apply to money borrowed for the common good.

13.—

(1) All capital assets and liabilities which are transferred to a local authority from an authority which ceases to exist on 1st April 1996, other than property which is subject to section 17 of the Local Government etc. (Scotland) Act 1994 or which is referred to in section 15(5) or 16 of that Act, shall be paid into or transferred to the loans fund of the local authority.

(2) All investments transferred to the loans fund as from 1st April 1996 shall be entered in the accounts of the loans fund at the value shown on the account from which they are transferred.

14.—

Any statutory borrowing power vested in a local authority on or after 1st April 1996 shall be exercisable by them only in the following manner—

(a) by borrowing in accordance with this Schedule and carrying to the loans fund such sums as are necessary to enable that fund to make to the appropriate borrowing account of the local authority or to a relevant authority the advances which are required for the purpose for which the statutory borrowing power is available; and

(b) by making from the loans fund such advances to the appropriate borrowing account of the local authority or to a relevant authority, as the case may be.

15.—

(1) Subject to sub-paragraph (2) below and to sub-paragraph (2) of paragraph 1 above, all sums advanced to a borrowing account of a local authority or to a relevant authority shall be repaid within the fixed period by equal yearly or half-yearly instalments of principal, or, where repayment is on the annuity system, by

equal yearly or half-yearly instalments of principal and interest combined; and the authority shall in each year debit the borrowing account or charge to the relevant authority the sums required in that year for the repayment of the advance.

(2) In any case where—

(a) a local authority make an advance to any person and the expenditure incurred in making the advance is defrayed by borrowing; and

(b) the terms of that advance are such that repayment is to be made otherwise than by equal yearly or half-yearly instalments of principal or of principal and interest combined; and

(c) apart from this sub-paragraph, the local authority would have no power, with respect to the expenditure referred to in paragraph (a) above, to vary the sums which would otherwise be debited or charged under sub-paragraph (1) above or to suspend their obligation under that sub-paragraph;

the local authority may, under sub-paragraph (1) above, debit to the borrowing account from which, or charge to the relevant authority by whom, the expenditure referred to in paragraph (a) above would otherwise fall to be defrayed, sums of different amounts (whether or not including instalments of principal) in respect of different years in order to take account of the terms on which their advance falls to be repaid.

(3) Subject to paragraph 16 below, the first payment to the loans fund shall be made within twelve months, or where the money is repayable by half-yearly instalments within six months, from the date of the advance.

16.—

(1) Where a sum is advanced from the loans fund in accordance with paragraph 14 above for any of the following purposes—

(a) meeting expenditure on the construction of new, or the extension or alteration of existing, works forming or to form part of an undertaking of revenue-producing character;

(b) carrying out on land any other operations, being operations of a prescribed kind or operations specified in relation to that land by direction of the Secretary of State;

(c) acquiring land for the purpose of the construction thereon of new, or the extension or alteration of existing, works forming or to form part of an undertaking of a revenue-producing character, or for the purpose of the carrying out thereon of operations of a kind prescribed by virtue of paragraph (b) above, or operations specified in relation to that land by direction of the Secretary of State;

(d) acquiring land specified by direction of the Secretary of State;

the authority may, subject to the consent of the Secretary of State, suspend in whole or in part any annual provision required under paragraph 15 above for the repayment from the borrowing account or by the relevant authority of the sum so advanced for such period (not being a period longer than the period during

which the expenditure remains unremunerative or the period of five years from the commencement of the year next after that in which the expenditure commences to be incurred, whichever is the shorter) and subject to such conditions as the Secretary of State may determine.

(2) Where any annual provision required to be made for the repayment of any sum has been suspended under sub-paragraph (1) above, a local authority may borrow for the purpose of payment, during the period of the suspension, of interest on that sum.

(3) Where by virtue of paragraph 15 above a local authority are required to debit a sum to the borrowing account or charge a sum to a relevant authority and they suspend, in whole or in part, any annual provision for the repayment of the principal, they may refrain from debiting to that account or charging to the relevant authority an amount equal to the amount of the annual provision so suspended.

(4) In this paragraph "*prescribed*" means prescribed by regulations made by the Secretary of State.

17.—

(1) The authority shall at the time an advance is made under paragraph 14 above determine—

(a) the period within which the advance is to be repaid to the loans fund, being a period not exceeding the fixed period; and

(b) the amount of each of the periodical payments required to repay the advance within the period so determined, and the date on which the first of the said payments is to be made.

(2) The periodical payments shall be either equal yearly or half-yearly instalments of principal or, where the advance is to be repaid on the annuity system, equal yearly or half-yearly instalments of principal and interest combined, the amount of principal included in each instalment being separately stated.

(3) The periodical payments shall so far as practicable be so adjusted as to be expressed in complete pounds.

(4) This paragraph shall apply with the necessary modifications in the case of advances from the loans fund to a relevant authority.

18.—

In the event of it appearing at any time from a report by the Controller of Audit or otherwise that the authority specified therein have failed duly to make payment of interest or of the appropriate periodical sums required to be set aside for the repayment of advances made from the loans fund as aforesaid, or that the provisions of this Schedule or any regulations made thereunder have otherwise not been duly complied with, the Secretary of State may apply by petition to the Court of Session to have the authority ordained to make such payment and to comply in such other manner with the provisions of this Schedule or

such regulations as may be necessary in the circumstances, and the Court are hereby authorised to do therein as shall appear to be just.

19.—

Without prejudice to paragraph 18 above, the Secretary of State may from time to time as he thinks fit cause an investigation to be made into the administration of the loans fund of the authority, who shall bear the expenses of such investigation.

20.—

(1) If at any time any sums due by way of principal or interest on any security created by a local authority remain unpaid for a period of two months after demand in writing, the person entitled thereto, being the holder of such a security to the amount of not less than £1,000, or the persons entitled thereto, being the holders of such securities amounting together to not less than £2,000, may present a petition to the Court of Session for the appointment of a judicial factor, and the Court may, if they think fit, appoint a judicial factor.

(2) Subject to the directions of the Court, the judicial factor shall have all the powers of the local authority of levying rates, the council tax and the council water charge, making requisitions on other local authorities and collecting and recovering sums due to the authority in respect of rates or requisitions and any other sums whatsoever due to the authority and such other powers and duties as the Court think fit, and shall apply all money received by him, after payment of expenses including a proper remuneration for his trouble, as the Court direct for the purposes of this Schedule.

(3) The judicial factor shall have such access to and use of the books and documents of the local authority as he may require.

(4) The powers conferred by this paragraph shall be in addition to and not in derogation of any other powers competent to the holder of a security for enforcing payment of the sums due under the security.

21.—

(1) Notwithstanding anything in this Schedule, the Secretary of State may by regulations make such provision as appears to him necessary or expedient with respect to the operation of the loans fund of a local authority and such regulations may apply generally or in the case of any particular authority or class of authority.

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

22.—

(1) Subject to the provisions of this Schedule, a local authority may establish any of the following funds—

(a) a capital fund, to be used for defraying any expenditure of the authority to which capital is properly applicable, or in providing money for repayment of the principal of loans (but not any payment of interest on loans);

(b) a renewal and repair fund, to be used for the purpose of defraying expenditure to be incurred from time to time in repairing, maintaining, replacing and renewing any buildings, works, plant, equipment or articles belonging to the authority.

(ba) an insurance fund, to be used for the following purposes, namely—

(i) where the authority could have insured against a risk but have not done so, defraying any loss or damage suffered, or expenses incurred, by the authority as a consequence of that risk;

(ii) paying premiums on a policy of insurance against a risk.

(2) A fund established by a local authority under this paragraph shall not be used to meet, directly or indirectly, any expenditure incurred by the authority for the purposes of (c) a statutory undertaking of the authority, being a transport, district heating, harbour, dock, pier or ferry undertaking or a market or civic restaurant and if the renewal and repair fund or the insurance fund is used so to meet expenditure incurred by the authority in relation to any house, or other property, to which their housing revenue account relates, the amount in question shall, subject to paragraph 1(7) of Schedule 4 to the Housing (Financial Provisions) (Scotland) Act 1972, first to be carried to the credit of that Account.

In this sub-paragraph, "*pier*" and "*ferry*" do not include a pier or ferry provided under section 2(2) of the Local Government (Development and Finance) (Scotland) Act 1964.

(3) Notwithstanding anything in any enactment, pending the application of any such fund as aforesaid for the purposes authorised by this paragraph, the money in the fund shall (unless applied in any other manner authorised by any enactment) be advanced to the loans fund or invested in accordance with regulations made under section 40 of the Local Government in Scotland Act 2003 (asp 1).

(4) The provisions of this paragraph shall be in addition to and not in substitution for any other enactment authorising a local authority to establish a fund for a purpose for which a fund may be established under this paragraph; and a local authority may amalgamate any fund established by them under any other enactment with any corresponding fund established by them under this paragraph.

23.—

(1) Subject to sub-paragraph (2) below, a local authority by whom a capital fund is established under paragraph 22 above may pay into that fund—

(a) any sums derived from the sale of any property of the local authority, not being property held by them for any such purposes as are mentioned in paragraph 22(2) above; and

(b) such sums as the local authority may from time to time by resolution direct;

and shall pay into that fund a sum equal to the amount of any income arising from the fund.

(2) Except with the consent of the Secretary of State, money received from the disposal of any property to which the local authority's housing revenue account relates shall not be paid into any such capital fund.

(3) All money applied from any such capital fund may, if the local authority think fit, be repaid from the account to which that money is advanced by such annual instalments (with or without interest) and within such period as the local authority may determine.

24.—

(1) A local authority by whom a renewal and repair fund, or an insurance fund, is established under paragraph 22 above may from time to time pay into that fund such sums as they may by resolution direct.

(2) The purposes for which any such renewal and repair fund may be applied shall not include the defraying of expenditure of an undertaking of the local authority in respect of which the authority are authorised to provide a reserve fund.

25.—

(1) Notwithstanding anything in any enactment, a local authority may use, for any purpose for which the authority has a statutory borrowing power, any money forming part of, but not for the time being required for the purposes of, any fund of theirs to which this paragraph applies; and where any such money is so used the following provisions of this paragraph shall have effect.

(2) The money so used shall be repaid to the said fund as follows:—

(a) it shall be repaid as and when it is required for the purposes of that fund;

(b) if not required to be repaid earlier under paragraph (a) above, it shall be repaid within the period within which a loan raised under the statutory borrowing power would be repayable, or at such time before the expiration of that period as the authority may resolve.

(3) The statutory borrowing power shall be deemed to be exercised by the use of money under this paragraph as fully in all respects as if a loan of the same amount had been raised in exercise of the power.

(4) This paragraph applies to any fund established for the repayment of debt, or as a reserve, or for the maintenance, renewal or repair of property, or for superannuation of staff, or for insurance, or otherwise for meeting future expenditure of a capital or non-recurring nature, or for any like purpose.

(5) In this paragraph "*statutory borrowing power*" does not include the power to borrow by way of temporary loan or overdraft conferred by paragraph 3 above.

(6) The powers conferred by this paragraph are in addition to, and not in derogation of, the powers conferred by or under any other enactment.

26.—

A person lending money to a local authority shall not be bound to inquire whether the borrowing of the money is legal or regular or whether the money raised was properly applied and shall not be prejudiced by any illegality or irregularity, or by the misapplication or non-application of any of that money.

27— ...

28.—

(1) Subject to sub-paragraph (2) below, the provisions of this Schedule shall, subject to any necessary modifications, apply to a joint board having power to borrow money, and the Strathclyde Passenger Transport Authority, as they apply to a local authority.

(2) The Secretary of State may by regulations make such provisions as seem to him necessary or expedient with respect to the application of the provisions of this Schedule to

(a) a joint board; and

(b) the Strathclyde Passenger Transport Authority.

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

29.—

Save as otherwise expressly provided, the provisions of this Schedule in their application to money borrowed before the commencement of this Act by a local authority under a local enactment shall be subject to the provisions of such local enactment so far as inconsistent with the provisions hereof.

30.—

Nothing in this Schedule shall affect the power of a council having a common good to borrow on the security of the common good or any loan secured thereon.

31.—

In this Schedule, unless the context otherwise requires—

“advance”, in relation to the loans fund and a borrowing account of a local authority, means the transfer of money by way of loan from the loans fund to the appropriate borrowing account in exercise of a statutory borrowing power;

“borrowing account”, in relation to a local authority, means an account of the authority relating to a purpose for which the authority have a statutory borrowing power;

“council tax” shall be construed in accordance with the provisions of section 70(1) of the Local Government Finance Act 1992; *“council water charge”* shall be construed in accordance with the provisions of paragraph 6 to Schedule 11 to the Local Government Finance Act 1992;

“fixed period”, in relation to any sum advanced to a borrowing account or to a relevant authority, means such period not exceeding 30 years from the date of the advance as the local authority determine or such other period as the Secretary of State may determine in any particular case or, from time to time, for any class of cases or for the purpose of any enactment;

“loans fund” means the loans fund established under this Schedule;

“mortgage” means a deed containing an assignation by way of security of the funds, rates and revenues of a local authority;

“relevant authority” means any authority to whom a local authority may make a loan under paragraph 10 or 11 above;

“security”, in relation to a local authority, means a mortgage, a bond, a deposit receipt or other document of debt issued by the authority and the security created thereby (including stock created by the authority or a certificate in respect of such stock) by or under any enactment, but does not include a heritable security or other deed of security or document of debt affecting the common good of an islands area or district;

“statutory borrowing power” means any power to borrow money conferred on a local authority by or under any enactment, but does not include the power of an islands or district council to borrow for the purposes of the common good;

“trustee securities” means any security in which trustees are for the time being authorised by law to invest trust money.

LOCAL GOVERNMENT IN SCOTLAND ACT 2003

35 Capital expenditure limits

(1) It is the duty of a local authority to determine and keep under review the maximum amount which it can afford to allocate to capital expenditure.

(2) In discharging that duty, the local authority shall comply with regulations made by the Scottish Ministers for the purposes of this section.

(3) Those regulations may, in particular, make provision—

(a) prescribing when and in respect of what period determinations under subsection (1) above are to be made;

(b) prescribing how those determinations are to be arrived at and any considerations to which regard is to be had in arriving at them;

(c) prescribing how local authorities are to keep those determinations under review under subsection (1) above and any considerations to which they must have regard in doing so;

(d) requiring local authorities to make to the Scottish Ministers such reports containing such information as is prescribed by the regulations;

(e) requiring the amount determined under subsection (1) above and factors on which the determination was based to be subjected to such process of audit as is prescribed by the regulations;

(f) requiring information about that amount and those factors to be published, and they may make different provision for different cases or different classes of case.

(4) The considerations referred to in paragraphs (b) and (c) above may include codes of practice referred to in the regulations.

36 Imposition of capital expenditure limits

(1) The Scottish Ministers may—

(a) by order, set the maximum amounts which local authorities may allocate to capital expenditure;

(b) by direction, set the maximum amounts which a particular local authority may allocate to capital expenditure.

(2) A maximum amount set under subsection (1) above supersedes any corresponding amount determined under section 35 above.

(3) Different amounts may be set under subsection (1) above in relation to different kinds of capital expenditure.

(4) As soon as practicable after the making of an order or direction under subsection (1) above, the Scottish Ministers shall lay before the Scottish Parliament a report containing information about the effect of the order or, as the case may be, direction and the reasons for making it.

1 Local authorities' duty to secure best value

(1) It is the duty of a local authority to make arrangements which secure best value.

(2) Best value is continuous improvement in the performance of the authority's functions.

(3) In securing best value, the local authority shall maintain an appropriate balance among—

(a) the quality of its performance of its functions;

(b) the cost to the authority of that performance; and

(c) the cost to persons of any service provided by it for them on a wholly or partly rechargeable basis.

(4) In maintaining that balance, the local authority shall have regard to—

(a) efficiency;

(b) effectiveness;

(c) economy; and

(d) the need to meet the equal opportunity requirements.

(5) The local authority shall discharge its duties under this section in a way which contributes to the achievement of sustainable development.

(6) In measuring the improvement of the performance of a local authority's functions for the purposes of this section, regard shall be had to the extent to which the outcomes of that performance have improved.

(7) In this section, "equal opportunity requirements" has the same meaning as in Section L2 of Part II of Schedule 5 to the Scotland Act 1998 (c.46).

LOCAL AUTHORITIES (GOODS AND SERVICES) ACT 1970

1.— Supply of goods and services by local authorities.

(1) Subject to the provisions of this section, a local authority and any person may, in relation to any relevant trading operation carried on by the authority, enter into an agreement for all or any of the following purposes, that is to say—

(a) the supply by the authority to the person of any goods or materials;

(b) the provision by the authority for the person of any services;

(c) the use by the person of any property belonging to or facilities under the control of the authority and, without prejudice to paragraph (b) above, the placing at the disposal of the person of the services of any person employed in connection with the property or facility in question;

(d) the carrying out by the authority of works of maintenance in connection with land or buildings for the maintenance of which the person is responsible.

(1A) A local authority shall not, in relation to any trading operation carried on by them, enter into an agreement under subsection (1) above if the likely result of doing so would be that the commercial services income accruing to the authority in any financial year under that and all other such agreements already entered into by the authority with such persons in relation to that operation would exceed the statutory limit.

(1B) Subsection (1A) above does not apply in respect of an agreement entered into by a local authority with—

(a) another local authority;

(b) a public authority or body; or

(c) a person who, in the circumstances set out in subsection (1L) below, enters into the contract in order to provide the local authority with goods or services, or with a person who, not being a public body, has functions of a public nature or engages in activities of that nature and the purpose or effect of the agreement is to facilitate discharge by that person of those functions or that person's engagement in those activities.

(1C) The restriction in subsection (1A) does not prevent a local authority from entering into an agreement where the likely result of doing so would be that the income referred to in that subsection will exceed the limit there referred to if the Scottish Ministers give prior consent to the authority doing so.

(1D) In subsection (1A) above—

(a) the “commercial services” income of a local authority is that part of their income which—

(i) is derived from agreements entered into for all or any of the purposes set out in subsection (1) above and is, in accordance with proper accounting practices, credited to a trading account kept by the authority for a trading operation;

(ii) is derived from relevant dividends; or

(iii) is derived from relevant profit sharing agreements; and

(b) the “statutory limit” for a trading operation is such amount as the Scottish Ministers may, by order, fix.

(1E) For the purposes of subsection (1D) above—

“relevant dividend” means a dividend paid by a body corporate which carries on operations which, if they were carried on by the authority to which the dividend is paid, would be relevant trading operations;

“relevant profit sharing agreement” means an agreement between a local authority and a body corporate which carries on such operations in terms of which the body corporate undertakes to pay to the authority a proportion of any income which it derives from carrying out those operations.

(1F) An amount so fixed may be expressed as a fraction of any other amount specified or referred to in the order.

(1G) Different amounts may be so fixed for different trading operations or classes of trading operation, and an amount may be so fixed for all trading operations.

(1H) Where, for any trading operation, no amount has been so fixed, the prohibition in subsection

(1A) above applies, the condition of its application set out in that subsection being ignored.

(1I) If, however, in the case of a trading operation for which no amount has been fixed, the Scottish Ministers give prior consent to a local authority entering into an agreement under subsection (1) above in relation to that trading operation, that prohibition does not apply.

(1J) An order under subsection (1D)(b) above shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.

(1K) Before making such an order, the Scottish Ministers shall consult such persons as they think fit.

(1L) The circumstances referred to in paragraph (c) of subsection (1B) above are that the local authority considers that the provision of the goods or services under the contract mentioned in that paragraph will be facilitated if the person who has entered into the contract is within that paragraph.

(1M) A local authority shall, before entering any such agreement as is referred to in subsection (1) above, have regard to whether doing so will be likely to promote or improve the well-being of—

(a) their area and persons within that area;

(b) either of those.

(1N) For the purposes of subsection (1M) above, “well-being” is to be construed in the same way as it is construed for the purposes of section 20 of the Local Government in Scotland Act 2003 (asp 1).

(1O) References in this section to a trading operation are, in relation to a local authority, references to a trading operation for which, in accordance with proper accounting practices (within the meaning of section 12 of the Local Government in Scotland Act 2003 (asp 1)) the authority keep trading accounts.

(1P) The reference in subsection (1) above to a relevant trading operation is a reference to a trading operation which is carried on for the purpose of enabling a local authority to raise money, by borrowing or otherwise.

(2) Nothing in paragraphs (a) to (c) of the subsection (1) above authorises a local authority—

(a) to construct any buildings or works; or

(b) to be supplied with any property, goods or materials or provided with any service except—

(i) for the purposes of functions conferred on the authority otherwise than by this Act;

(ii) for the purpose of enabling the authority to supply the property, goods or materials or, as the case may be, provide the service to another authority;

(iii) in the case of the supply of goods or materials, where that supply is for the purpose of, or is incidental to the purpose of, enabling the authority to supply property or, as the case may be, provide a service; or

(iv) in any other case, where the Scottish Ministers have consented to the supply or provision.

(3) Any agreement made in pursuance of subsection (1) of this section may contain such terms as to payment or otherwise as the parties consider appropriate.

(4) In this Act—

“local authority”, in relation to England and Wales, means the council of any county, county borough, county district or London borough, the Greater London Authority, the Broads Authority, the Common Council of the City of London, the Council of the Isles of Scilly and any joint board, joint committee and combined authority and any joint authority established by Part IV of the Local Government Act 1985, any economic prosperity board established under section 88 of the Local Democracy, Economic Development and Construction Act 2009, any combined authority established under section 103 of that Act, any authority established for an area in England by an order under section 207 of the Local Government and Public Involvement in Health Act 2007 (joint waste authorities), a Mayoral development corporation and the London Fire and Emergency Planning Authority and Transport for London and, in relation to Scotland, means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 or any joint board or combination of two or more such councils;

“property” includes land, accommodation, vehicles, plant and apparatus; and

“works of maintenance” include minor renewals, minor improvements and minor extensions.

(5) ...

(6) ...

(7) The Great Yarmouth Port and Haven Commissioners shall be treated as a public body for the purposes of paragraphs (a) and (b) of subsection (1) above as those paragraphs apply in relation to agreements entered into by the Broads Authority.

LOCAL GOVERNMENT IN SCOTLAND ACT 2003

12 Proper accounting practices

(1) It is the duty of a local authority to observe proper accounting practices.

(2) In subsection (1) above and in paragraph (b) of section 99 (auditor to be satisfied that proper accounting practices have been observed) of the 1973 Act, the references to proper accounting practices are references to accounting practices which fall within one or more of the following—

(a) those which the local authority is required to observe by virtue of any enactment;

(b) those which have been specified in guidance issued for the purposes of this section and that section by the Scottish Ministers;

(c) those which, whether by reference to any generally recognised, published code or otherwise, are regarded as proper accounting practices to be observed in the preparation and publication of accounts of local authorities.

(3) In the event of a conflict in any respect between the practices within paragraph (a) of subsection

(2) above and those within paragraph (b) or (c) of that subsection, only those within paragraph (a) are to be regarded as proper accounting practices in that respect, and in the event of a conflict in any respect between those within paragraph (b) and paragraph (c) of that subsection, only those within paragraph (b) are, in that respect, to be so regarded.