

SECTION 4

SCOTTISH LEGISLATION 1981

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Although 72 public Acts received the Royal Assent in 1981, only five were "Scotland only" Acts, of which four were of major importance.

The Local Government (Miscellaneous Provisions)(Scotland) Act makes a number of important alterations to the law of valuation and rating, and continues the battle between the central government and several local authorities in connection with local spending and rate support grants. With changes in the techniques of consultation used by modern government, several unnecessary or moribund advisory bodies are laid to rest.

Local authorities are also affected by the Education (Scotland) Act which aims at enhancing the rights of parents to choose their children's school, and of young persons over school-leaving age to do the same, and revises the statutory basis of the assisted places scheme. The educational needs of handicapped children and young persons are catered for along the lines recommended in the Warnock Report 1978 (Cmnd. 7212).

The Countryside (Scotland) Act contains many long-awaited amendments to the original Act of 1967. Perhaps the most interesting is the machinery for establishing Regional Parks.

These three Acts are for the most part in the form of textual amendments to the texts of the relevant principal Acts. This is in accordance with recommendations in chapter XIII of the Renton Report on "The Preparation of Legislation" 1975 (Cmnd. 6053). The new provisions become substitutes for, or additions to, the sections in the principal Acts. This should enable reprints of the Statutes in Force to appear more speedily. The new technique does not appear to have won so many converts in the Office of the Parliamentary Counsel, as the English Education Act, which contains many provisions very similar to those in the Scottish Act dealing with children and young persons with special educational needs, is on more traditional lines and is merely "to be construed as one with the principal Act".

The Matrimonial Homes (Family Protection) (Scotland) Act followed speedily on the heels of the Scottish Law Commission's Report on Occupancy Rights in the Matrimonial Home and Domestic Violence, 1980 (Scot.Law Com.No. 60). Although generally welcomed, no commencement order to bring it into effect had been made by the beginning of May 1982, over six months after it received the Royal Assent.

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23 Local Government (Miscellaneous Provisions)(Scotland) Act

This Act consists of four parts and two schedules of substance, a general part with standard form provisions and two schedules of minor and consequential amendments and repeals.

The Local Government (Scotland) Act 1975 (c.30) defined "year of revaluation" for rating purposes as 1978-79 and each fifth year thereafter. Part I of the Act of 1981 starts by enabling the Secretary of State to amend this definition by order approved by resolution of both Houses of Parliament. Although expressed in neutral terms, it is more likely that the power will be used to delay than to accelerate revaluation for rating.

In view of the fact that reform of the rating system is in the air, there are provisions to enable the Secretary of State to restrict revaluation to "specified" classes of lands and heritages. "Unspecified subjects" will be entered at the same net annual value as in the old valuation role. However, he will then be required to consult CoSLA and the Scottish Valuation Advisory Council before making an order prescribing a method for adjusting the net annual value of specified and unspecified subjects to maintain the ratio previously existing between them. Different methods may apply to different valuation areas. An order specifying restricted revaluation requires approval of both Houses of Parliament, while the method for adjustment is subject to a negative resolution in either House.

Commercial buildings will in future be valued with reference to net annual value, and not by way of an artificial gross annual value subject to statutory deductions.

Where gross annual values continue to apply (now only to domestic subjects) the table of deductions in the Valuation and Rating (Scotland) Act 1956 (4 & 5 Eliz. 2 c.60) may be amended by order of the Secretary of State.

The remaining provisions of this part contain a number of minor reforms and concessions. These are

- (a) for the benefit of charities applying for rating relief;
- (b) for the remission of rates on unoccupied and unfurnished premises where the relevant period straddles two financial years;
- (c) for the abatement of rates payable while a valuation appeal is pending; and
- (d) for postponing until the subsequent year the effect on a householder's rates bill when improvements or extensions enhance the value of a dwelling house during the course of the financial year.

Rates demands amounting to less than £20 (or whatever sum may be specified by order of the Secretary of State) will be payable in lump sums, not by instalments. This will be relevant to those enjoying substantial rate rebates, and to the occupiers of garages standing on sites separate from their houses.

23 A brief but important amendment ceases to include goods merely in the lawful possession of a ratepayer from those that may be poinded or seized by a sheriff officer in enforcement proceedings to recover unpaid rates. This will protect the owners of goods hired to, or belonging to the spouse or other members of the family of, the defaulting ratepayer.

Part II contains the most controversial provisions of the Act. These are designed to enable the Secretary of State to endeavour to bring to heel, or to punish, those recalcitrant local authorities whose spending policies are out of line with those of the central government.

The Secretary of State may reduce the rate support grant where he considers a local authority's expenditure or estimated expenses to be excessive and unreasonable. The criteria for this judgment include the expenditure or estimated expenses of other local authorities, general economic conditions and "such other financial, economic, demographic, geographical and like criteria as he considers appropriate". An authority faced with possible reduction in rate support grant will be able to avoid this by reassessing its estimated expenses and reducing its rate. (Lothian Regional Council chose to surrender a portion of rate support grant, rather than "return" the money to the ratepayers an action which possibly had political repercussions in the elections of 1982).

Under the Act, an authority is forbidden to attempt to evade the effects of a cut in rate support grant by means of an advance from its loans fund. Any such advance will have to be reimbursed.

Minor amendments to the Housing (Financial Provisions) (Scotland) Act 1978 (c. 14) in Part III, are designed to modify the method of fixing the aggregate amount of housing support grants in order to remove distortions in the distribution of grant between different authorities. Richer authorities will lose the grant altogether.

Part IV contains the miscellany of provisions par excellence, and must be read with Schedules 1 and 2.

Schedule 1 makes a number of minor alterations to the powers of, and administrative arrangements in relation to, the Commissioner for Local Administration in Scotland (the "local authority ombudsman").

In contrast with the increasing financial control by central government over local government expenditure, Schedule 2 contains over 40 paragraphs relaxing control over the activities of local authorities in a dozen and a half Acts. Many of these involve the repeal of the power of the Secretary of State to give directions to planning authorities.

The Advisory Council on Social Work, the Scottish Food Hygiene Council, the Scottish River Purification Advisory Committee and

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- 23 the Advisory Committee on Conservation and Provision of Water Supplies are abolished. Some of these had not met for several years. Consultation is now achieved by other means, including, as in the case of the Scottish Food Hygiene Council, by direct contact with those whose interests are affected.

In order to make the tenant's right to buy under the Tenants' Rights, Etc. (Scotland) Act 1980 (c. 52) effective where the landlord does not own the land on which a house stands, the Secretary of State may make an order, subject to approval of both Houses of Parliament, vesting the land in the landlord. This is designed to meet difficulties arising where the Scottish Special Housing Association owns houses built on land leased from a District Council (such as Glasgow and Dundee) that refuses to sell the land to the Association.

Appropriately in the International Year of the Disabled, two sections relate to the provision of adequate facilities for the needs of the disabled.

43 Disabled Persons Act 1981

For the most part this Act amends legislation applicable throughout Great Britain or to England and Wales only. There is however a new section slotted into the Roads (Scotland) Act 1970 (c.20).

Highway and other authorities must have regard to the needs of blind or other disabled persons whose mobility may be impeded by any works these authorities are executing, or by any lamp-posts, bollards, traffic-signs or other permanent obstructions they are placing in a road or footpath.

They must consider the desirability of providing ramps between carriageways and footways, and see that holes are properly protected for the benefit of blind persons.

44 Countryside (Scotland) Act

This Act implements proposals made by the Countryside Commission for Scotland over a number of years, by way of a series of textual amendments to the Countryside (Scotland) Act 1967 (c. 86). The Commission's reports, "A Park System for Scotland", published in 1975, and "Scotland's Scenic Heritage", published in 1978, are essential background reading. A briefer government Bill introduced in the House of Lords by Lord Hughes in 1979 was lost with the dissolution of Parliament that year. The present Act was introduced as a private member's Bill, with government support.

The Act increases the financial autonomy of the Commission, in the making of grants and loans, bringing it into line with the English Countryside Commission, which was granted similar independence by the Local Government Act 1974 (c.7). The making of grants and loans is to be in accordance with arrangements approved by the Secretary of State and the Treasury. De facto autonomy has been enjoyed since the change of government in 1979.

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- 44 Minor alterations are made to the rules for payments in connection with access agreements and several provisions requiring the Secretary of State's intervention are relaxed or repealed.

Regional councils are given power to designate lands within their region as regional parks, which are defined as an extensive area of land, part of which is devoted to the recreational need of the public. Regional parks may extend over the territory of more than one region, and the relevant councils will exercise their powers jointly. Ownership of land is not affected, but designation of land as a regional park must be taken into account in dealing with planning applications.

It may be noted that the provisions in the original Act of 1967 for areas of special planning control are repealed. The only area so designated was the Pentland Hills area; it would be a suitable candidate for designation as a regional park.

District and islands councils are given power to make byelaws to control the use of vehicles and aircraft (including models) in order to prevent disturbance in quiet areas of the countryside by their engines. Motor-cycle scrambling, sno-cats, helicopters, pleasure boats and water skiing, not to mention the flying of model aircraft, all have tended to contribute to disturbance of the peace of the countryside in recent years. Essential and emergency services and the Crown are exempt from control by these byelaws.

Recognition is given of the fact that the wardens appointed under the Act of 1967 are now generally known as rangers, a term which has perhaps a friendlier and more romantic sound.

58 Education (Scotland) Act

The greater part of this Act and its Schedules consists of textual amendments to the Education (Scotland) Act 1980 (c.44), "the principal Act". Some sections of the principal Act are repealed, but the new Act consists of numerous additions to or substitutions for the earlier provisions. Although it runs to only 22 sections, this conceals the fact that many of these include up to a dozen new sections, to be slotted into the principal Act.

Following the consultative paper "Admission to School: A Charter for Parents" published in 1980 by the Scottish Education Department, the rights of parents (including guardians and others having actual custody of a child) to request that the child be placed in a school of their choice are considerably enhanced. Young persons (i.e. over school age but not yet 18) have similar rights. Education authorities are required to provide information about their placing system and to set up appeals committees to whom parents and young persons may refer decisions of the authority refusing their request. There is a further appeal to the sheriff in chambers and his judgment on an appeal is final. However, that will not prevent it from being subject to review by the Court of Session with a view to having

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58 it quashed.

One of the minor consequences of these provisions is that when a child is placed in a school more than walking distance from its home as a result of a placing request, this distance cannot be pleaded as an excuse for non-attendance, if the authority had proposed to place the child in a school of its choice, either within walking distance or with suitable arrangements so that the child would not have to walk more than walking distance.

The recommendations of the Report of the (Warnock) Committee of Inquiry into the Education of Handicapped Children and Young People, 1978 (Cmnd. 7212) are implemented in great detail. Provisions must be made for the "special educational needs" of children and young persons. These are needs caused by greater difficulty in learning than that experienced by others of their age group, or by suffering from a disability that prevents or hinders a child from making use of ordinary educational facilities. However, a child is, perhaps surprisingly, not to be taken to have a learning difficulty merely because the language of instruction differs from that used in the home.

The English Education Act 1981 (c. 60) contains parallel but not identical provisions.

The Act gives a new statutory basis to the assisted places scheme to help certain pupils attend grant-aided and independent secondary schools. The scheme was originally introduced under the Education (Allowances for Assisted Places in Secondary Schools)(Scotland) Regulations 1981 S.I. No. 488 made under powers granted to the Secretary of State in sections 73 and 74 of the Education (Scotland) Act 1980 (c. 44). The category of grant-aided schools will eventually disappear and there are necessary amendments to the principal Act to facilitate their transition to fully independent status.

There are extensive provisions for consultation, and concerning the Secretary of State's consent, in relation to a wide range of educational matters to be prescribed by the Secretary of State in Regulations.

New arrangements are made for financing the Examination Board, by charges to be paid by education authorities and the managers of independent educational establishments presenting pupils for examination. Since January 1, 1982, under Regulation 3 of the Scottish Examination Board Regulations 1981, S.I. No. 1562, the Scottish Certificate of Education Examination Board has been re-named the Scottish Examination Board.

The sections in the principal Act relating to remuneration of teachers are completely replaced by new sections. There are established, from January 1, 1982, two negotiating committees, for teachers in schools and for teachers in further education employed by education authorities, colleges of education and central institutions. These replace five former negotiating committees.

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58 The power to reorganise endowments is transferred from the Secretary of State to education authorities, except in the case of those endowments subject to reorganisation by the Scottish Universities Committee of the Privy Council, when the governing bodies will be able to petition the Court of Session to give effect to draft reorganisation schemes.

The 109-year-old ban on inspection of religious instruction in schools is removed.

The university courts of the three universities that are pre-reformation foundations - St Andrews, Glasgow and Aberdeen - are given power to appoint their Principals. Formerly these were Crown appointments. This brings these universities into line with most others.

59 Matrimonial Homes (Family Protection)(Scotland) Act

This Act is based on the Report of the Scottish Law Commission on Occupancy Rights in the Matrimonial Home and Domestic Violence, published in July 1980 (Scot. Law Com. No. 60).

For the first time, a spouse who has no title to the matrimonial home (the "non-entitled spouse") is given the right to enter, occupy, and not be ejected from, the matrimonial home. Either spouse may apply to the Court of Session or the sheriff to declare and regulate the occupancy rights of the spouses. The expression "matrimonial home" is extended to include caravans and houseboats.

The non-entitled spouse may renounce these occupancy rights in writing, but the renunciation must be accompanied by an oath or affirmation before a notary public that it was made freely and without coercion. Fears have been expressed that building societies may require renunciation as a condition of granting a loan. There are several provisions to prevent evasion of the aims of the Act, and although the new occupancy rights are effective without registration they are effective against third parties, with some exceptions; the main exception is the case of a bona fide purchaser without notice, if at the time of the sale the entitled spouse produces an affidavit that there is either no non-entitled spouse, or a renunciation of occupancy rights or consent to the sale.

Either spouse may apply to the Court of Session or the sheriff for an exclusion order against the other, non-applicant, spouse, to protect the applicant or any child of the family from conduct that is or might be injurious to their physical or mental health.

The court may order the transfer of a tenancy to a non-entitled spouse; this may occur in granting decree of divorce. It is possible that the drafting of these provisions is ambiguous, as the parties will cease to be spouses on divorce, but it is to be hoped that common sense will prevail and public money not wasted on legally aided litigation to clarify this point.

59 Limited occupancy rights are also available to the non-entitled partner where a couple are cohabiting as if they were man and wife. But the rights are not automatic. An application must be made to the Court of Session or the sheriff. The rights will be granted for an initial period of 3 months, and may be extended for successive periods of up to 6 months: but the applicant is less well protected against a clandestine sale of the house by the other partner.

The Act introduces two further concepts, the exclusion order and the matrimonial interdict.

The exclusion order is designed to protect the applicant spouse or a child of the family from actual or prospective violence by the other spouse. It may be backed up by an interdict and a warrant for the ejection of the other spouse.

The matrimonial interdict may restrain or prohibit any conduct of one spouse towards the other or a child of the family, or prohibit the other from entering or remaining in the matrimonial home, or its vicinity. It may be granted even when the couple are living together as man and wife. It seems therefore that it could cover a wide spectrum of conduct.

The matrimonial interdict may be ancillary to an exclusion order. The Court may attach a power of arrest without warrant to the interdict. If the procurator fiscal decides not to prosecute, a spouse who is arrested must be brought before the sheriff on the next day on which the court is sitting, and in certain circumstances the sheriff may order his detention for a further 2 days. This is intended to protect the applicant spouse from molestation until the hearing of a civil action for breach of interdict.

72 Housing (Amendment)(Scotland) Act

The aggregate amount of advances to the Scottish Special Housing Association is increased to £600 million, but the Secretary of State may by order (exercisable by statutory instrument subject to affirmative resolution of the house of commons) increase this to £750 million. The Housing (Amendment)(Scotland) Act 1976 (c.11) is consequently repealed.

The greater part of its expenditure is financed through loans from the National Loans Fund, but an increasing proportion is now met from receipts from sales. By the autumn of 1981 some 3,000 sales had been completed and a further 3,000 were in process. The SSHA owns about 93,000 houses.

The 1982 Yearbook contains an Index of Scottish Legislation covering the years 1970-1980 (see pages 307 to 312).

Readers may wish to update their copies of the Index. The following items should be entered at the appropriate places in alphabetical order.

Countryside, 1981 c. 44.

Disabled Persons, 1981 c.43.

Education, 1981 c. 58.

(Family Protection), Matrimonial Homes, 1981 c. 59.

Government, Local, (Miscellaneous Provisions), 1981 c. 23.

Housing, 1981 c. 72.

Local Government (Miscellaneous Provisions), 1981 c. 23.

Matrimonial Homes (Family Protection), 1981 c. 59.