

Muss. L. George



Circular 9/77
(Department of the Environment)

Circular 8/77
(Welsh Office)



Joint Circular from the
Department of the Environment
2-Marsham Street, London SW1P 3EB

Welsh Office
Cathays Park, Cardiff CF1 3NQ

Sir,

31 January 1977

Local Government (Miscellaneous Provisions) Act 1976

**Extent &
commencement
of the Act**

1. We are directed by the Secretary of State for the Environment and the Secretary of State for Wales to draw attention to the Local Government (Miscellaneous Provisions) Act 1976.

2. The Act applies to England and Wales. Part II which came into force when the Act received Royal Assent on 15 November will be the subject of a separate circular to be issued shortly by the Secretary of State for the Home Department. Parts I and III are brought into operation on 14 February 1977 by the Local Government (Miscellaneous Provisions) Act 1976 (Commencement) Order 1977 (SI 1977 No 68 (C3), a copy of which is enclosed with this circular.

Appendices

3. Appendix A gives brief details of some of the more important provisions. Appendix B is a general disposal consent under section 128(1) of, and for the purposes of sections 123 and 127 of, the Local Government Act 1972 arising from section 19 of the Act.

Financial restraint

4. Although the Act is part of a long term effort to rationalise local legislation it should also be seen in the immediate context of constraints on local authority expenditure and manpower, (DOE Circulars 120/76 and 123/76, Welsh Office Circulars 188/76 and 194/76). Local authorities will appreciate that the Act provides them with additional powers to spend. In view of the pressing need for continued economy the Government would expect local authorities not to exercise those powers to the detriment of planned reductions in their budgets.

6. A number of such provisions have been included in subsequent public Acts but the main benefit will accrue from the Local Government (Miscellaneous Provisions) Act, almost all of which is derived from private Acts. The general enactment of so many provisions should reduce considerably the need for general powers clauses in private Bills; indeed it is hoped that as a result some councils will find it unnecessary to promote Bills for general powers.

7. It is recognised that the Miscellaneous Provisions Act does not include all the general powers which some local authorities feel should be embodied in the general law. Some provisions have emerged for further consideration during work on the present Act: others will no doubt emerge from local authorities' reviews of their existing law. In any event the Department will continue to examine private Bills for powers which should be put into the general law when a suitable opportunity occurs.

Timing of future Bills

8. Attention is drawn to paragraph 7 of Circular 14/74 which dealt with the timing of "rationalisation" Bills. It now seems likely that Bills from the metropolitan counties, whose local law will expire in 1979, will occupy to a great extent the next two sessions of Parliament. It is suggested therefore that other counties wishing to promote Bills should aim at sessions after 1978/1979. But there is of course no reason why these councils should not continue to review their old law and consult as early as possible with Government Departments about the proposed contents of their Bills. Councils are requested to discuss their proposed timetables with the Department at an early date so as to avoid congestion in particular years.

JOINT CIRCULAR D.O.E. 9/77 W.O. 8/77

dated 31 January 1977

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976

Correction

Appendix A Section 16

In the paragraph on section 16 concerning the power of local authorities to obtain particulars of persons interested in land, 'social service authorities seeking to bring vacant accommodation into use in accordance with their overall responsibilities' lines 24-25 should read 'social service authorities in performing environmental health functions, and to housing authorities seeking to bring vacant accommodation into use in accordance with their overall responsibilities'

DEPARTMENT OF THE ENVIRONMENT AND WELSH OFFICE

LONDON: HER MAJESTY'S STATIONERY OFFICE

February 1977

APPENDIX A

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976, PART I

- Power to erect flagpoles etc on highways** Section 1 is designed to cover decorations which are illuminated as well as those which are not. It applies to parish and community councils.
- Control of scaffolding on highways** Section 2 prohibits the erection of certain scaffolding in a highway unless a licence is obtained from the highway authority. In issuing a licence highway authorities are reminded not to impose conditions which conflict with or duplicate other legal requirements such as those contained in Part 1 of the Health and Safety at Work etc Act 1974, and the Construction (Working Places) Regulations 1966 (SI 1966 No 94). These and other provisions provide full control over the structural safety of scaffolding. The provision is designed to provide control purely for highway purposes.
- Conditions of consents for temporary deposits and excavations in highways** When granting consents under section 4 highway authorities are reminded not to impose conditions which conflict with or duplicate other legal requirements such as those contained in Part I of the Health and Safety at Work etc Act 1974 and the Construction (General Provisions) Regulations 1961 (SI 1961 No 1580), in particular Part IV.
- Control of roadside sales** Section 7 is being brought into force with the other provisions of Part I but will be inoperable until regulations are made prescribing the procedure for making control orders under the section. The regulations are being drafted.
- Safety of certain unoccupied houses** Section 8 empowers local housing authorities, after giving at least 48 hours notice, to carry out necessary works to secure certain unoccupied premises against unauthorised entry or to prevent them becoming a danger to public health. This provision applies to:—
- (i) unfit houses which are subject, under Part II of the Housing Act 1957, either to an undertaking that they will not be used for human habitation or to a closing order;
 - (ii) any part of a house in multiple occupation which is without adequate means of escape from fire and which is for this reason subject either to an undertaking that it will not be used for human habitation or to a closing order, until such means are provided.
- It should be noted that authorities have no power to recover their costs from the owner, nor does the provision apply to unfit houses subject to a demolition or clearance order because in these circumstances authorities have power to demolish in default of demolition by the owner.
- The provision is designed to enable authorities to take action which is essentially a continuation of action already begun under powers conferred in the Housing Acts. The Secretaries of State consider that the securing of other unoccupied property should be a matter for the owner and not for local authorities.
- Revocation of closing order as respects part of premises to which it relates** Authorities already have power under section 18 of the Housing Act 1957 to make a closing order in respect of part of a building, but up to now have had no general power to determine a closing order in part in cases where only part of the house has been made fit. Section 10 amends section 27 of the Housing Act 1957 so that a closing order can be modified to leave only part of the house subject to the order—for example where the whole house except the basement is made fit. Section 69 of the Housing Act 1969 provides for a repayment in certain circumstances of owner-occupier

supplementary payments or well-maintained payments which have been made by an authority in respect of premises subject, *inter alia*, to a closing order which is subsequently determined. Subsection (3) of section 10 provides for partial repayment where the closing order is determined in part and subsection (4) sets out the formula for assessing the amount of the appropriate proportion which is to be repaid.

Production and supply of heat etc by local authorities

Sections 11 and 12 confer in certain circumstances a general power on local authorities to provide district heating. The power is intended to supersede existing powers which may either be in a local Act or incidental to a function conferred by general legislation. The general powers now conferred extend the powers exercisable by waste disposal authorities under section 21 of the Control of Pollution Act 1974.

Section 11 empowers local authorities to produce, buy or otherwise acquire heat which may then be used, sold or otherwise disposed of within, or outside, an authority's premises or administrative area. The power to produce electricity is designed to facilitate joint schemes for heat production and electricity generation. However, arrangements to do so must be agreed with the Central Electricity Generating Board to which the electricity is to be sold, and approved by the Secretary of State (who may impose any conditions he thinks fit). Any proposed arrangements should be submitted to the Department of Energy. All electricity produced must be used at the generating installation and associated premises or sold to the Regional Electricity Board. Local authorities may install and maintain pipes and associated works in connection with a district heating scheme and are given power to dig up public streets for this purpose.

Section 12 provides for supplementary powers and requires local authorities to keep a separate district heating account. Local authorities considering making byelaws about the design and specification of works and apparatus are advised to consult the Department of the Environment and the Health and Safety Executive about relevant regulations made or to be made under or by virtue of the Health and Safety at Work etc Act 1974.

DOE circular 82/71 (Welsh Office circular 181/71): District Heating: A Checklist and Commentary, advises local authorities on assessing the suitability of district heating to their purposes and on the submission of schemes to the Department for approval.

Compulsory acquisition by local authorities or rights over land

Section 13 enables rights over land to be acquired compulsorily instead of the land itself. Schedule 1 modifies the Acquisition of Land (Authorisation Procedure) Act 1946 and the Compulsory Purchase Act 1965 accordingly. Highways authorities already have powers under sections 47 to 50 of the Highways Act 1971 to acquire compulsorily new rights for highways purposes, and relevant procedural guidance was given in Circular Roads 45/71 (paragraphs 15 to 18). Guidance on the use of the new powers will be given in a later circular. In the meantime authorities wishing to acquire rights compulsorily may find it helpful to submit a draft of the proposed compulsory purchase order to the Department of the Environment or Welsh Office for comment without prejudice to the confirming authority's consideration of any subsequent formal submission of the order.

Injurious affection connected with certain land held by local authorities and acquired by agreement before 1 April 1974

Section 14 enables authorities, pursuant to a resolution which shall not come into force until an order to that effect is made by the appropriate Minister, to contravene restrictive covenants which inhibit the execution of works on certain land acquired by agreement before 1st April 1974, subject to the payment of compensation to persons whose interests in land are depreciated thereby and who can establish a claim under section 68 of the Lands Clauses

Consolidation Act 1845 or section 10 of the Compulsory Purchase Act 1965. This broadly achieves the same effect as section 120(3) of the Local Government Act 1972 in respect of land acquired by agreement after 1 April 1974. Where the powers in paragraphs 10, 23(1) and 23(2) of Schedule 4 to the Community Land Act 1975 are not considered appropriate to the particular case and it is decided to use these new powers, further guidance on procedures will be available from the Department of the Environment or Welsh Office on request.

Power of local authorities to survey land which they propose to acquire compulsorily

Section 15 provides a general power to survey land in connection with a proposal to acquire it compulsorily where a specific power is not available. Authorities are reminded that, in particular, the National Coal Board's responsibilities include coal seams and workings under surface land not owned by the Board. Notices issued under section 15(3)(f) should therefore take account of notifications made to planning authorities by the NCB under article 13(1)(d) of the Town and Country Planning General Development Order 1973 (SI 1973 No 31).

Power of local authorities to obtain particulars of persons interested in land

Section 16 enables a local authority, with a view to performing a statutory function, to serve on certain people a notice requiring them to state the nature of their own interest in specified land and the name and address of other persons having an interest in that land or authorised to act as agents in respect of it. A notice served on someone not in the defined categories may be disregarded as being of no effect. It is envisaged that the power will be particularly helpful to authorities in their efforts to deal with empty properties of unknown ownership—for example to social service authorities seeking to bring vacant accommodation into use in accordance with their overall responsibilities for housing in their areas. Section 16 empowers authorities, for instance, to serve a notice on the managing agent of an empty property requiring him to supply the name and address of the freeholder. Section 170 of the Housing Act 1957 is repealed. The section applies to parish and community councils.

Licensing of pleasure boats and boatmen

Section 18 remedies certain defects in section 94 of the Public Health Acts Amendment Act 1907, which gives local authorities the discretionary power to licence pleasure boats and boatmen.

The most important change is to make it an offence for a person in charge of a boat carrying passengers for hire to operate without a licence. This is not considered to mean that a person hiring a boat for his own use requires to be licensed.

Recreational facilities

Section 19 gives local authorities, including parish and community councils, a general power to provide recreational facilities in place of the powers in section 4 of the Physical Training and Recreation Act 1937, the Physical Training and Recreation Act 1958 and section 221 (b) of the Public Health Act 1936, which are repealed. Recreational facilities are not defined but in paragraphs (a) to (c) of subsection (1) a number of specific facilities are listed to illustrate what may be provided under the powers; the list is not intended to be exhaustive.

All the facilities listed in subsection (1) (a) to (c) have been provided by local authorities under powers in either public general or local Acts but some, particularly those provided under the latter, may have been provided only rarely. In general it is considered that local authorities will wish to be very cautious in the provision of some of the more specialised facilities and they will certainly wish to obtain specialist advice before taking a final decision.

Riding schools, for example, have been provided by only three local authorities. Because of the special problems of their provision and management the local authorities concerned have taken the expert advice of the British Horse Society, who are willing to give advice to any other local authority considering such provision and for most other facilities advice can be obtained from the appropriate regional council for sport and recreation; if they are unable to provide advice themselves they will be able to put the local authority in touch with the governing body for the sport concerned.

The power to grant a lease for recreational purposes in section 4 (1) of the Physical Training and Recreation Act 1937 has not been reproduced. Land held for the purpose of section 19 can be let under sections 123 or 127 of the Local Government Act 1972. Because these sections require the consent of the Secretary of State where land is let at less than the best consideration, a requirement not found in section 4 (1) of the 1937 Act, a general consent is included as appendix B to this circular. This general consent does not conflict with the requirements under section 123A of the Local Government Act 1972 (inserted into that Act by the Community Land Act 1975) which was the subject of the general consent in Annex D of Circular 26/76. The effect of the new consent is that local authorities will be in the same position as they were in under section 4 (1) of the 1937 Act.

The word "educational", in section 4 (1) of the Physical Training and Recreation Act 1937, has not been included in para (d) of subsection (1) in order to distinguish between facilities provided under the Education Acts, to which recreational and social objects may be incidental and social activities which do not primarily have an educational object.

Subsection (6) repeals the power in section 222 (1) of the Public Health Act 1936 to make charges for the use of swimming baths and bathing places. This is now available in subsection (2) of the new section. The effect of deleting "swimming bath or bathing place" from section 222 (1) is to remove the obligation to advertise changes in charges for swimming baths and bathing places.

**Provision of
sanitary appliances
at places of
entertainment**

Section 20 empowers local authorities other than county councils and the Greater London Council to require certain sanitary facilities to be provided and maintained for the use of the public in any of the "relevant places" (defined in subsection (9)) where they are expected to assemble. It supersedes section 89 of the Public Health Act 1936, and covers wider ranges of places and sanitary facilities. There are limitations. Moveable appliances are not to be required at betting offices; and requirements as to fixed installations in an existing building are not, when building regulations are in force for comparable new buildings, to be more onerous than could be imposed under the regulations on a similar new building.

Local authorities may serve notices requiring facilities to be provided either for continuing use of a "relevant place" or for its use on specified occasions—an "occasional notice"; the two may not be combined in one notice. In the former case, section 21 provides for an appeal against the notice to lie to the county court and the notice must specify a period for compliance not less than the 6 weeks allowed for such an appeal. A person served with such a notice may challenge a requirement of that notice as unreasonable and/or claim that it would have been fairer to serve the notice on another person who is an owner or occupier of the place in question. It is not a requirement, for this purpose, that the person shall have been an owner or occupier when the notice was served. Where the second ground for appeal is included, subsection (2) of section 21 provides that the other person concerned shall be made a respondent to the appeal; and the court may

either quash the notice or dismiss the appeal, or it may transfer the obligation of complying with the notice to a person other than the appellant or require that other person to pay a specified part of the expense of complying.

No appeal lies to the county court against an occasional notice since the occasion for which provision is required might have come and gone before the court could hear an appeal; and the length of the period to be specified for compliance is not prescribed; but unreasonable requirements in an occasional notice may be challenged in any proceedings for non-compliance. It is also a defence, in such proceedings to show that an occasional notice would more fairly have been served on another person who was an owner or occupier of the relevant place when the notice was served and that the defendant provided the local authority with the name and address of the other person before the end of the period for compliance specified in the notice.

To simplify the framing of notices which enlarge earlier requirements, particularly occasional notices, subsection (4) of section 20 permits a notice to be served notwithstanding the requirements of an earlier notice and appliances which have already been installed.

During the passage of the Bill through Parliament, some concern was expressed over owners and occupiers of premises being at risk under more than one piece of legislation in respect of the provision of sanitary facilities, with the possibility of conflicting requirements. It is also clearly undesirable that the standards observed for the purposes of section 20 for some premises should differ from those observed for others merely because some premises are also open to some other sort of control. Local authorities will wish to take steps to avoid this happening so far as possible. The following examples have been noted:—

sanitary conditions and cleanliness at pleasure fairs and roller skating rinks are open to byelaw control under section 75 of the Public Health Act 1961;

conditions regarding sanitary conveniences are commonly imposed when licences are issued under the Cinematograph Acts.

There is also a possibility of circumstances arising in which a council might consider issuing a notice under section 20 in relation to premises licenced under Part II of the Gaming Act 1968, and subject to overlapping requirements imposed in connection with that licence.

By subsection (10) a person on whom a notice is served under this section is required, in complying with the notice (as previously when a notice was served under section 89 of the Public Health Act 1936) to have regard, so far as is practicable and reasonable, to the needs of disabled persons.

Byelaws about fairs etc

Section 22 extends section 75 of the Public Health Act 1961, to enable a local authority to make byelaws for preventing outbreaks of fire at pleasure fairs, and to make byelaws for fairs and places of entertainment at present excluded from section 75.

The Home Office, as the confirming authority for byelaws under section 75, has issued recently a 'Guide to Safety at Fairs' which comprehensively covers many aspects of safety at fairgrounds and similar places of entertainment. New model byelaws will be issued shortly with a memorandum detailing the amendments to section 75 made by the section.

Power to deal with dangerous trees

Sections 23 and 24 enable district councils to take action in connection with a dangerous tree when asked to do so by the owner or occupier of the land on which the tree stands or by the owner or occupier of land threatened by the tree. The powers are intended though as a last resort. In general the responsibility for the removal or treatment of dangerous trees on private land should remain with the owner or occupier. They should normally be able to find a contractor to fell or treat their dangerous trees; when authorities are approached by a neighbour they should be particularly careful to ensure that he has made a genuine effort to reach agreement with the owner of the tree before they consider taking action. There are also powers under section 134 of the Highways Act 1959 as extended by section 10 of the Highways (Miscellaneous Provisions) Act 1961 to deal with dangerous trees encroaching upon public roads and footpaths.

In section 23(6) the procedural provisions of section 21 are applied with appropriate modifications.

Section 24(6) gives power to recover expenses with interest. In accordance with section 171(2) of the Local Government Act 1972, councils are entitled to charge interest on recoverable sums at a rate of $\frac{1}{4}\%$ above the Public Works Loan Board (PWL) rate for loans to local authorities of 15 years. The Treasury has directed that the applicable PWL rate shall be that for instalment loans in the Quota band.

Power of certain councils with respect to dangerous excavations

Sections 25 and 26 enable certain councils to carry out works at their own expense to provide protection to the public from dangerous excavations on private land to which the public has ready access. Although these sections will be of particular help to councils with open areas of countryside in private ownership containing unprotected wells, shafts and pits or where new housing development has brought the population closer to hitherto unfrequented stretches of countryside, it is expected that councils will need to use the powers conferred by them only as a last resort when the owner or occupier cannot be persuaded to mitigate the danger, or where reasonable but unsuccessful attempts have been made to trace the owner or occupier of the land. These powers are in addition to those already available to councils under section 144 of the Highways Act 1959 and section 151 of the Mines and Quarries Act 1954.

Funds of local authorities etc

Section 28 replaces existing powers in public general and local Acts permitting local authorities to establish capital, reserve and renewals and repairs funds while no longer imposing the financial restraints common to such legislation. It does not affect any enactments which impose obligations on local authorities to keep separate accounts, like housing or trading accounts, nor does it supersede provisions governing loans funds and superannuation funds.

The section substitutes new paragraphs for paragraphs 16 to 18 and amends paragraph 19 of Schedule 13 to the Local Government Act 1972. It empowers local authorities to establish and maintain any funds they may deem necessary to the proper administration of their financial affairs. Authorities may themselves decide what payments to make into any funds they establish and there are no restrictions as to the size of the funds or of individual transactions. Surpluses on funds may be invested in any securities in which superannuation fund moneys may be invested, subject to proper advice where this is required by the Trustee Investments Act 1961. The Secretaries of State are advised that the terms of the section are wide enough to permit the closure of a fund.

Funds already established under existing statutory powers are now deemed to have been set up under this section and may be maintained in accordance with the new powers.

With limited exceptions, a fund may be either general to all the functions of an authority or particular to one service. The exceptions are that expenditure on trading undertakings may only be financed from a fund that is set up for the purposes of that undertaking; and that insurance funds may be used only to meet any claims that may arise and, if authorities so wish, to pay premiums to outside insurance companies.

The requirement that capital receipts from the sale of property associated with the Housing Revenue Account may only be paid into a fund with the consent of the Secretary of State is retained.

From time to time local authorities have expressed uncertainty about their powers to rate or precept for sums they propose to set aside for use in future years. The section resolves these doubts and ensures that any power to make a rate or levy a precept shall include a power to make or issue it for the purpose of making payments into a fund established under the new provisions.

Power of local authorities to execute works outside their areas

Section 32 is not found in local Acts but arises from section 274 of the Public Health Act 1936 which provided that works authorised by that Act should be executed either inside or outside the authority's area, subject to any express provisions to the contrary. Section 32 replaces that provision and extends to any power to execute works.

The Secretaries of State wish to emphasise that section 32 confers no new powers to carry out works. It merely provides that where a local authority has an existing power to execute works it may exercise that power outside its own area as well as inside provided that there is no express prohibition on its use outside that area.

Restoration or continuation of supply of water, gas or electricity

Section 33 empowers local housing authorities to assist residential occupiers whose supplies of gas, water, or electricity have been cut off, or are about to be cut off, because their landlords or other persons through whom they have been paying for their supplies have failed to pay the relevant statutory undertakers. Local authorities are enabled to pay the outstanding bills and reconnection charges and to recover what they have paid, with interest, from the defaulters, either directly or by diversion of rent.

The section applies both where the occupier pays a rent which is inclusive of gas, electricity, or water or where the landlord has installed coin-in-the-slot meters.

In accordance with section 171(2) of the Local Government Act 1972, authorities are entitled to charge interest on recoverable sums at a rate of $\frac{1}{4}\%$ above the Public Works Loan Board (PWLB) rate for loans to local authorities of 10-15 years. The Treasury has directed that the applicable PWLB rate shall be that for instalment loans in the Non-Quota A Band.

Where a local authority are entitled to recover a sum from the present landlord they may, as an alternative to direct recovery, require the occupier to pay his rent to them instead of the landlord until the debt is paid. The wording of the section makes clear that the occupier should be told that the rent should be paid to the authority *instead* of the owner.

Access for removal and storage before removal, of refuse etc from buildings

Section 34 widens the provisions of section 55 of the Public Health Act 1936 to give local authorities power to reject plans for all new buildings where access for removal of refuse is inadequate and gives greater control over facilities to be provided for the storage of refuse. It also makes it an offence to close or obstruct an access used for the removal of refuse or faecal matter from any building and raises the maximum fine for this type of offence.

There is provision for this section to be replaced in due course wholly or partly by building regulations.

Removal of obstructions from private sewers

Section 35 complements section 17 of the Public Health Act 1961. For blocked private sewers only, it provides for a system of operating the notice procedure so as to produce a simpler and fairer method of apportioning costs amongst the affected parties. Under the 1961 Act a notice requiring a private sewer to be unblocked can be served only on the owner or occupier of the premises where the blockage occurs, despite the fact that other premises higher up the sewer derive benefit from its use and may well have caused or contributed to the stopping up of the sewer. Under this system the cost of any remedial works falls to be met by the person on whom notice is served. The present section avoids this by providing for the service of notices on the owner or occupiers of all, or some, of the properties served by the blocked sewer.

Market times and charges

Section 36 releases local authorities from certain limitations in respect of their markets contained in some local Acts and so framed that they were not removed by section 199(4) of the Local Government Act 1972 (which enables local authorities to fix market days and hours, and also charges under the Food and Drugs Act 1955 and local Acts without the need to obtain the consent of the Secretary of State).

Where a local Act authorises market or fair days and hours to be appointed by byelaws, the authority will now be able to appoint them by resolution. They will also be able to determine charges, from time to time, free of any limitation in a local Act which relates to the market.

The section applies to parish and community councils.

Control of parking on areas used for loading or unloading goods vehicles

Service areas near shops are often obstructed by parked cars so that delivery vans are forced to park on the public road where they cause congestion and obstruction. Since the service areas are on private land it has not in the past been possible for traffic authorities to control parking there.

Section 37 enables county councils and the Greater London Council to designate as a "loading area" land which the occupier has set apart (whether in accordance with a planning permission or not) for the loading or unloading of vehicles in connection with a trade or business being conducted on or near to the land concerned. A designation order cannot be made or varied without the consent of the owner and occupier of the land, and must be revoked if the owner and occupier subsequently request this.

Regulations may be made under the Road Traffic Regulation Act 1967 concerning the disposal of vehicles left in loading areas and the procedure for making orders designating loading areas.

The section is being brought into force with the other provisions of Part I but will be inoperable until regulations are made prescribing the procedure for making designation orders. These are being drafted.

Use of spare capacity of computers of local authorities

Section 38 is designed to assist local authorities to make full use of any surplus capacity in computers which they may have purchased to facilitate the discharge of any of their functions.

The general rule is that a local authority is authorised both to purchase a computer and to sell any surplus capacity by virtue of section 111 of the Local Government Act 1972 insofar as such a purchase and sale remain incidental or conducive to the discharge of the local authority's functions. (In this respect it is to be noted that section 111 of the Act of 1972 does no more than give expression to the common law rule expressed in the case of *A.G. v. Smethwick Corporation* (1932) 1 Ch. 562. It may prove difficult for a local authority to assess its present needs for computer capacity or to estimate the need for future capacity and as a result a local authority may find it has acquired a computer with a capacity several times in excess of its immediate needs. Whilst it is a question of fact and degree to be considered by a local authority in individual cases, it may be that the sale of surplus capacity is of such a degree and to such an extent that it is questionable whether such sales can properly be regarded as incidental to the discharge of any local authority function. It is to resolve these doubts that the section authorises the making of agreements for such sales.

It is to be noted that the section does not empower a local authority to purchase a computer for the sole or primary purpose of selling or hiring out computer facilities; the purchase of a computer, so as not to be *ultra vires* the local authority, must be required as a necessary incidental to the discharge of that local authority's functions within the general rule expressed in section 111 of the Act of 1972.

Local authorities not affected by trusts attaching to certain securities issued by them

Section 40 makes provision for securities which are not covered by the Local Authority (Mortgages) Regulations 1974 (SI 1974/518) and the Local Authority (Stocks and Bonds) Regulations 1974 (SI 1974/519). Local authorities may, in the register of the holders of securities, describe holders as trustees or the holders of a certain office or position without accepting any notice of trust.

Evidence of resolutions and minutes of proceedings

Section 41 provides that copies of certain formal documents shall be acceptable as evidence in any legal proceedings provided that they are certified by a person authorised to do so.

It is to be noted that the section facilitates the proof of documents by the production of copies but does not permit the proof of facts by the production of a certificate.

The section applies to parish and community councils.

Certain future local Acts, etc to be subject to the planning enactments etc except as otherwise provided

Section 42 ensures that all local Acts passed after or in the same session as the Local Government (Miscellaneous Provisions) Act 1976 which authorise the carrying out of specified works on specified land are subject (unless the contrary intention is expressed) to the provisions of the Town and Country Planning Acts and also, where appropriate, to Acts relating to historic buildings and ancient monuments, section 9 of the Harbours Act 1964 and section 1(1) of the Dumping at Sea Act 1974. The effect is that in legislation of the kinds specified in subsection (2) it will be unnecessary to insert saving clauses for the Acts specified in subsection (1).

When the Bill was introduced it contained a similar reference to section 34 of the Coast Protection Act 1949 which relates to the control of works which may obstruct or endanger navigation. This had to be deleted at a later stage because it was found that section 34 was defective. Conditions

which may be imposed upon a consent granted under the section bind only the person carrying out the works which necessitate the consent and to whom the consent is given and then only until the construction of the works has been completed. They do not enable conditions to be imposed which, for the life of the works, would safeguard navigation.

To overcome the deficiency it will continue to be necessary to insert certain clauses for the protection of navigation in local Bills authorising the execution of specified works on specified land. When a suitable opportunity arises it is proposed to enact a general provision which gives effect to these special clauses and also to provide a saving for that provision from the effect of subsequent local Acts.

Clauses for the protection of navigation will not of course be needed where general powers are conferred to execute unspecified works on unspecified land since Part II of the Coast Protection Act 1949 will continue to apply to such works; nor are saving clauses needed for any other public general Acts where local Acts confer such general powers.

GENERAL DISPOSAL CONSENT
LOCAL GOVERNMENT ACT 1972
CONSENT TO DISPOSAL OF LAND HELD FOR
RECREATIONAL PURPOSES

Introduction, Application, Commencement and Citation

1.—(1) This consent so far as it applies to local authorities in England is granted by the Secretary of State for the Environment and so far as it applies to local authorities in Wales is granted by the Secretary of State for Wales in pursuance of powers conferred on them under section 128(1) of, and for the purposes of sections 123 and 127 of, the Local Government Act 1972.

(2) This consent applies to any local authority.

(3) This consent comes into operation on 14 February 1977, and may be cited as the "Recreational Land General Disposal Consent 1977".

Interpretation

2.—(1) In this consent:

"the Act of 1937" means the Physical Training and Recreation Act 1937;

"the Act of 1976" means the Local Government (Miscellaneous Provisions) Act 1976;

"local authority" has the same meaning as it has in section 19 of the Act of 1976;

"land" has the same meaning as it has in the Local Government Act 1972;

"leasehold interest" does not include a term having less than seven years to run at the date of the disposal.

(2) The Interpretation Act 1889 shall apply for the interpretation of this consent as it applies for the interpretation of an Act of Parliament.

General Consent

3.—(1) Subject to the subsequent provisions hereof, as respects land described in paragraph 1 of the Schedule hereto, consent is hereby granted to the disposal by a local authority by way of the grant or assignment of a leasehold interest.

(2) The consent hereby granted is subject to the limitations specified in paragraph 2 of the Schedule.

Amendment and Revocation

4.—The consent hereby granted may at any time be amended or revoked by the Secretary of State either generally or in relation to a particular local authority or class of local authority.

SCHEDULE

Description of land

1. Any land which has been acquired or appropriated by a local authority and is for the time being held for the purposes of section 19 of the Act of 1976,

except land which was held immediately before the date on which this consent comes into operation for the purposes of section 221 of the Public Health Act 1936 or section 144 of the Local Government Act 1972.

Limitation

2. Disposal shall be to any person, or body of persons whether incorporated or not, for use for any of the purposes of section 19 of the Act of 1976.

Signed by authority of the Secretaries of State

D A S SHARP, *An Assistant Secretary in the Department of the Environment*

R D POTTER, *An Assistant Secretary in the Welsh Office*

21 January 1977

© Crown copyright 1977

HER MAJESTY'S STATIONERY OFFICE

Government Bookshops

49 High Holborn, London WC1V 6HB
13a Castle Street, Edinburgh EH2 3AR
41 The Hayes, Cardiff CF1 1JW
Brazennose Street, Manchester M60 8AS
Southey House, Wine Street, Bristol BS1 2BQ
258 Broad Street, Birmingham B1 2HE
80 Chichester Street, Belfast BT1 4JY

*Government Publications are also available
through booksellers*

35p net

ISBN 0 11 751164 1