

Paul Clayden

Arnold-Baker on
Local Council
Administration

Ninth Edition



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Local Council Administration

In English Parishes and Welsh Communities

Ninth Edition

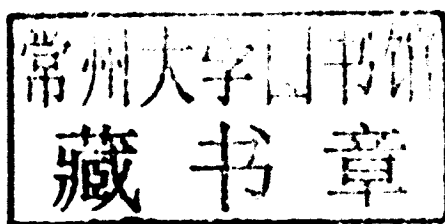
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and

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Solicitor

Chief executives of the National Association of Local Councils respectively
from 1953 to 1978 and from 1995 to 1998



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Local Council
Administration

Also by Charles Arnold-Baker:

The Local Government Act 1972

The Local Government Planning and Land Act 1980

The Five Thousand and the Living Constitution

Practical Law for Arts Administrators

The Companion to British History (revised edn, 2001)

To the Knowledgeable Amateurs Without Whom Democracy is Impossible

Special textual expressions used in this book

To avoid wearisome repetition and constant qualification the following expedients have been used:

The expression 'local council' means 'parish and community council', and accordingly 'locality' means 'parish and community'.

'Electors' meeting' means 'parish and community meeting'.

The symbol 'T'

The symbol 'T' (standing for transfer): structural changes at principal area level resulted in the consequential transfer of functions from district to county or (in Wales) county borough councils, or in England, vice versa. Hence, in Wales, the word 'district' must after 1 April 1996 be read as 'county or county borough'. In England the structural changes were not all effective at the same time and the words 'district' and 'county' retained their previous meanings for some time; alternatively 'district' may be read as 'county' or 'county' as 'district', depending on the local outcome of the reviews. Thus, where functions are attributed to a district or county council, it must be born in mind that they may have been transferred. The relevant passages are marked 'T', but further changes of this type are not expected.

The symbol 'W'

The Government of Wales Act 1998 provided for the progressive transfer of ministerial functions to the National Assembly for Wales. Where this is known to have been done the relevant passages in Part I are marked 'W'.

Preface

The problems which faced me when I became Secretary of the National Association of Parish (now Local) Councils in 1953 were very different at the legal and geographical, let alone the social, level from those which existed when I left it 26 years later. In particular, though the Association had been providing its members with an, especially legal, advisory service, there was no modern book in which the necessary material could be found. The volume of requests and correspondence was vast and because of the absence of a reliable canon of information, consumed time which might, in those disturbing times, be put to better use. I resolved, as much for my own information as for my correspondents', to write such a book in the hope that the councils would acquire copies of it and so reduce their demands upon my then tiny office. The two first editions appeared under the name *Parish Administration*. The change to the present title came with the Association's change of name in 1972. Nominally this is the seventh edition, but really it is the ninth.

The problems have, of course, changed again and, on the legal side, have called for successive revisions of the book. On the social and geographical side every village in the land has been affected by the growing dependence upon the internal combustion engine, the invasion of the heavy goods vehicle and by migration. Less than 10 per cent of rural dwellers now live in the place where they were born. If village life is not to disintegrate altogether, there must be a more self-conscious mode of organising it than has hitherto existed.

The necessary reappraisal has been forced upon rural society cumulatively, as by the pressure of a rising tide. The changes will, I believe, continue. Word processing, and cable and facsimile and screen transmission may render large town offices unnecessary, for many who now work in them will be able to work at home and communicate face-to-face from their desks. This in its turn may cause a migration of shopping facilities and catering out of the urban centres. All this, the threatened abolition of a tier of local government and much more, will increase the social importance of the local council. The rising numbers of these councils perhaps indicate the shape of things to come. Well over a thousand have been created since 1974.

Meanwhile legislation continues. Local government has experienced the effects of the council tax, and there has been the controversy about restrictions on the official promotion of homosexuality, but to these parliamentary issues must now be added the incursion of legislation originating in Brussels. The interminably-named *Town and Country Planning (Assessment of Environmental Effects) Regulations 1988* were issued to comply with EEC Council Directive 85/337. An impartial observer may feel surprised that the Council of

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the then EEC should, or indeed lawfully could, concern itself with the procedural details of planning processes in its member states. Obviously its activities need to be closely watched not only by national governments and political bodies, but by the local authority associations and their international alliances.

This in turn draws attention to the acceleration and widening scope of law-making by departmental order. *Parish Administration*, published in 1958, needed only five pages for such orders. The reader may care to compare this with the Appendix of Statutory Instruments in this edition. Moreover the provisions of the older statutory instruments were mostly of minor effect. By contrast, s 119 of the Local Government Finance Act 1988 conferred power upon the Secretary of State to amend references to rates and rateable values in existing public and private Acts by substituting 'some factor other than the one connected with rating'. This enormous ministerial power is not more precisely defined. It affects many widely separated matters.

It is a commonplace that the life and shape of smaller settlements is changing rapidly, and with it, necessarily, the parochial and communal system which reflects them. There would be less paper, less distraction and probably less expense if our law on these things were more generalised and adaptable. Local councils should be empowered to do as they please and leave it to common sense and their own economics to do what is right. This is the principle of French and other European local systems, which are not, in consequence, half-throttled by legalism. The 'free resource' (or rather its predecessors, the 'free two pence' and the 'free fifth') was the fruit of foreign precedents, and probably saved the local councils during the dangerous time of the Redcliffe-Maude Commission. The international sharing of experience is vital to progress, even to survival.

At the other end of the spectrum, there are great changes of local practice and personnel. It is a far cry from the old ecclesiastical parish clerk who was supposed to be able to 'read and write, and, if possible, sing', to the well organised and versatile village administrator now, with his word processor and answer-phone and his Cheltenham qualification in local policy, who is increasingly in evidence; and, despite the rigidities in the law, local councils continue to show much enterprise and originality. As a result of forty-odd years of correspondence with them and the many who have kindly made suggestions for this book, its content is not exclusively legal nor confined solely to local councils.

Moreover, the work of local councils is obstructed by constant changes in the law. In the 1997 edition we expressed surprise at the number of changes since 1994, but substantially the layout of this work had remained the same since the first edition some fifty years ago. In 2002 we had to re-organise it. Users of previous editions will find that this is a very different work from the last. We do not apologise for this: we place the responsibility squarely upon restless governments and ambitious administrators.

Consistently with this, we must again draw attention to an important and, in our view, malign trend. The reforms of 1972 and later years have destroyed much of the elected content of our system. About seventeen-thousand elective seats have been abolished with the destruction of the municipal corporations, small districts and two-tier principal government. There are equivalents

elsewhere: elected traffic commissioners, for example, have gone, and bodies for entertaining complaints against public services seem less than independent. It is becoming doubtful if the public is properly in control of its own affairs.

In principal councils, as too in the House of Commons, the members do not (save by accident) represent communities, but electoral aggregations designed for numerical similarity rather than human quality. These aggregations are mostly too large for their representatives to supervise in detail, while local councils, aided by advertising, increasingly focus opinion on branches of a system not their own. The local council is becoming important because of what it thinks of other authorities, and, in the words of the late Professor Brian Keith-Lucas, Chairman of the National Association of Local Councils, to the Redcliffe-Maude Commission, their increasingly important function is 'to raise hell'.

Like it or not, the local councillor is becoming the last democratic survivor.

Acknowledgment

I would like to have thanked Ann Rowen, MBE for her work in typing the manuscript of the 1981 edition. However, sadly, she died just before the previous one was published.

Charles Arnold-Baker

Temple

Note on the ninth edition

Since the publication of the eighth edition, the original author of this book, Charles Arnold-Baker OBE, has died. As secretary of the National Association of Local Councils from 1953 to 1978, he probably did more than any other individual to give local councils a proper voice in the national forum of local government. As a result, local councils today have more powers and influence than ever before. They have shown that they are competent and confident in taking the lead in local affairs.

Although only four years have passed since the eighth edition, a new edition is warranted to cover the many changes in the law since April 2009 with direct application to local councils. These include: (1) the Localism Act 2011, which applies only to England so far as it relates to local councils. The Act re-writes the legislation covering codes of conduct and the declaration of pecuniary interests, confers powers on "eligible" parish councils to adopt a general power of competence, introduces the concept of neighbourhood planning and confers a right on local communities to bid for community assets (e.g. recreational buildings) when the owners wish to dispose of them; parish councils can play a key role in preparation of neighbourhood plans and in the acquisition of community assets; (2) revised accounts and audit regulations (the Accounts and Audit Regulations 2011) in England; (3) a consolidation of charity law into the Charities Act 2011; (4) the Equality Act 2010, which broadens the scope of the law against discrimination, and, in Wales only, the conferring on community councils the power to promote well-being. In Wales, the powers of the National Assembly to legislate on Welsh matters have been widened. The Local Government (Wales) Measure 2011 and the Welsh Language (Wales) Measure 2011 affect community councils. One effect of the

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widening of the legislative powers of the Assembly has been to increase the differences between the legal powers and constitutional arrangements of parish and community councils.

As well as the foregoing, many detailed changes to regulations and orders have been made.

The law is stated at 1 April 2013.

Paul Clayden

Henley-on-Thames

March 2013

Abbreviations used in this book

A	Act
AA	Allotments Act
ACA	Audit Commission Act
AMC	Association of Municipal Corporations
BA	Burial Act
CA	Charities Act
DEFRA	Department for Environment, Food and Rural Affairs
E	(see Appendix I)
F	Finance
FP	Financial Provisions
GDO	General Development Order
HA	Highways Act
LAMIT	Local Authorities Mutual Investment Trust
LG	Local Government
LG&HA	Local Government and Housing Act
LG&RA	Local Government and Rating Act
LGPS	Local Government Pensions Scheme
MP	Miscellaneous Provisions
NALC	National Association of Local Councils
ODPM	Office of the Deputy Prime Minister
OS	Open Spaces
P	(see Appendix I)

Abbreviations used in this book

PAWA	Public Audit (Wales) Act 2004
PC	Parish Councils
PH	Public Health
PLA	Poor Law Amendment
PSWC	Private Street Works Code
PWL	Public Works Loans
RP	Representation of the People
RT	Road Traffic
RV	Rating and Valuation
SH	Small Holdings
SLCC	Society of Local Council Clerks
T	(see previous page)
TCP	Town and Country Planning
W	(see previous page)

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