



# LOCAL GOVERNMENT, PLANNING AND LAND ACT 1980

*by*

CHARLES ARNOLD-BAKER, O.B.E., B.A.

*of the Inner Temple, Barrister*

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## PREFACE

Some acts have, despite parliamentary treatment, retained a very obvious unity which it is the purpose, procedurally, of short and long titles to promote. The Local Government Act 1972 was one such. It is only necessary to read the titles of the Local Government, Planning and Land Act 1980 to see that, though it may have an underlying political purpose, it is not, in a drafting sense, an organic whole.

It was possible in the Act of 1972 to distinguish issues of principle from matters of detail, and to attempt to expound the former in an introduction and the latter in footnotes. This time it seemed that such treatment might be ineffectual or confusing, and I have therefore, apart from a short introductory excursus, confined comment mostly to footnotes, some of which are long.

The bill for this Act had a chequered career. It was originally introduced into the Lords on 29th November 1979 but this first bill was abandoned, and a new, somewhat different No. 2 bill was begun in the Commons on 24th January 1980. The latter was itself heavily amended to accommodate ideas of members of both Houses and the views of pressure groups, and even more heavily by the government which, *inter alia*, added, in the legislation on Enterprise Zones, an entirely new Part which was really a new Act. The whole work expanded from 210 pages in January 1980 to 330 when it received the Royal Assent on 13th November.

In these circumstances it was not feasible to do much work on the text until it was very close to its last parliamentary stages, and after it became law there was a pause of nearly two months before the Queen's Printer's copies became available. This is not, of course, an excuse for any of this book's defects, for which, naturally, I am responsible, but it may illustrate for others the growing difficulty, both intellectual and mechanical, of comprehending modern legislation quickly.

### ACKNOWLEDGMENT

The user will not be surprised that this manuscript was particularly trying to type and collate, and I would like to express my gratitude to Miss Ann Rowen, M.B.E., for doing it with her usual patience and accuracy.

CHARLES ARNOLD-BAKER

*The Temple, March 1981*

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## INTRODUCTION

This long Act resembles a statute in the mediaeval sense, that is to say a collection of decisions unrelated or only distantly related to each other but in juxtaposition by the accident of passage in the same parliament. It bears all the marks of having been drafted as several different Acts: indeed when the political impulse to introduce policy legislation took shape, bills long mouldering on some draughtsman's shelf must have been taken down in haste and hitched to the main vehicle. It is hard otherwise to explain its discursiveness, its repetitions and its lack of unified drafting. The list of one hundred and nine *Definitions of Wider Effect* at the end of this introduction illustrates some of the difficulties, but not, in this linguistic field all of them. Some important expressions such as "current cost accounting" (s. 16 (3)) and "assessment" (s. 116) have no definition at all, either here or, so far as the present commentator can discover, relevantly in any other statute; some of the grammar (*e.g.* s. 58 (1) and (2)) is tortured; there are at least two errors (see s. 88), arising out of Second House amendments not consequentially followed up; and a variety of apparent after-thoughts have disorganised the presentation of the subject matter. [1]

### *A general observation on the method*

It is perhaps apposite to inquire whether the reputation of the parliamentary machine can be improved by the issue of written laws expressed in so slipshod and convoluted a manner. Moreover the excuse for elaborate legal language used to be precision, but many enactments in this Act are alarmingly imprecise and are evidently so intended. This is particularly observable in the financial provisions (for example in ss. 17, 28, Part VI and Part VIII) where ministers have acquired vast influence on the balance of taxation through the, not entirely new, expedient of power to vary definitions. [2]

Lord Hewart was the Cassandra of modern constitutionalists, and his celebrated *New Despotism* contained, as long ago as 1929, warnings against the covert erosion of liberties and their safe-guards; he was respectfully ignored at the time and eyes have been averted from his perfectly accurate thesis ever since. The form of the present Act, as parliament has been persuaded to accept it, seems to qualify for his observation (dangerous though it is to quote from a spurned authority) that "the citizens of a State may indeed believe or boast that, at a given moment, they enjoy, or at any rate possess, a system of representative institutions, and that the ordinary law of the land, interpreted and administered by the regular Courts, is comprehensive enough and strong enough for all its proper purposes. But their belief will stand in need of revision if, in truth and in fact, an organized and diligent minority, equipped with convenient drafts, and employing after a fashion part of the machinery of representative institutions, is steadily increasing the range and the power of departmental authority and withdrawing its operations more and more from the jurisdiction of the Courts."<sup>1</sup>

It seems possible that the results of this legislation may be paradoxical, for, if it increases the power of ministers in order to reduce the scope and

<sup>1</sup>*The New Despotism*, p. 12.

manpower of public administration, that power must in practice be exercised with the co-operation of the very manpower which it is sought to reduce. [3]

#### MODIFICATIONS OF THE SYSTEM

##### *The primary objectives*

The Act is part of an avowed policy to drive back the frontiers of the state. This is to be done on a variety of fronts. Firstly Part VI empowers the central government (personified mainly by the Secretaries of State for the Environment and for Transport with, at vital points, the consent of the Treasury) to curb the spending of principal councils on current account by manipulating the grant system. This may force a council to account to its electors and ratepayers for expenditure above a centrally determined level, instead of spending increasing amounts from the pockets of taxpayers to whom it is not responsible. [4]

Secondly the government took power (Part VIII) to control the capital spending of all local authorities with the financially unimportant exception of parish and community councils, and to force (Parts X and XV) them and other public bodies to dispose of unused land. These powers, if vigorously exercised, may be expected to reduce the size of the "public estate", and for a time bring down or at least stabilise the price of land. It is the antithesis of the policy of the Community Land Act 1975, and it is therefore logical that Part XII with Schedule 17 should be devoted to its liquidation, while Part XII and Schedules 18 to 22 transform the Welsh Land Authority, the survivor of that Act, into a pipeline body for making land available to private interests. [5]

Thirdly Part III is designed to encourage local authorities to contract work out or, at any rate, to prevent them subsidising their own direct labour organisations so as to compete from a point of vantage with private contractors. It may be surmised that, combined with the new financial stringencies, this Part may check the long suspected propensity of large authorities to find work in order to keep their labour forces together. [6]

The policy favouring private initiative is supplemented by two other types of provision. Potentially the more interesting is Part II which will ultimately require local authorities to publish information about their activities to their electors who can only exert decisive electoral pressure upon them (unlike parliament) at fixed intervals of four years. This represents an important departure which may lead to a more open form of local government than the semi-privacy of the present committee-ridden system. The information to be published will have to be approved by the council concerned, and will have to conform with a voluntary or statutory code. Inaccuracy is likely to be restrained beforehand by public debate, and through the possibility of subsequent investigation by the Ombudsman.<sup>2</sup> [7]

The less interesting supplementary measures consist in the relaxation of bureaucratic controls. Part I with its seven attendant schedules purport to sweep these away wholesale, but a close inspection shows that many of these repeals are cosmetic (or less) in their effects, while many other similar but often more important changes are to be found elsewhere. For an example of the former type, Schedule 5, para. 2, abolishes the Minister of Agriculture's obligation to secure information and make an annual report to parliament on allotments. In fact no such report has been presented since 1939. Examples

<sup>2</sup> I make no apology for using this admirable Swedish word, which has passed into popular English here and into the official language of New Zealand. It is time that the titles of our many new public officials were shortened.

of the latter include the arrangements for expediting local plans in ss. 88 (in so far as it is intelligible) and 89 with Schedule 14, besides many of the amendments to general planning law in Schedule 15, and those on local authorities' dealings in land in Schedule 23. [8]

These major modifications of the existing system are filled out with some minor accretions, attached like barnacles to the main hull, and wearing the aspect of clauses for a departmental Miscellaneous Provisions Bill. Part IV provides for salaries for committee chairmen and deals with a tax anomaly in councillors' allowances. Part XIII remedies some particular compensation injustices. There is something about gipsies and their caravans in Part XVII, and Part XIX, apart from ss. 181 and 182 is a hodge podge of mutually unrelated oddments which include some relaxation of controls over social services and crematoria. [9]

The background of Part V is a desire to reduce central (rather than local) staffs, and simultaneously to reduce some of the less popular aspects of the rating system. The new valuation lists, compiled by the Revenue are, not for the first time, postponed, but in an inflationary era this creates difficulties in the finance of land drainage and compensation; accordingly ss. 181 and 182 and paragraphs 4, 8 and 14 in Schedule 33 have to be inserted to avoid embarrassments. The domestic rate reliefs and payments are to make life easier for the politically sensitive domestic ratepayer, the progressive surcharge on unused office property can now be suspended, and fish farming is sensibly equated with other farming (s. 31). In return for these boons, those appealing against rating assessments are to be placed in greater difficulties and the machinery for recovering unpaid rates is further streamlined. [10]

#### *Provisions of a new type*

The Act's main claims to originality lie in Part XVI on Urban Development and Part XVIII on Enterprise Zones. The former was in the bill as introduced. The latter was added at a late stage, and apart from its introductory section (s. 179) is wholly contained in Schedule 32. [11]

The precedents for Part XVI are mostly to be found in the New Towns legislation, but whereas the New Town corporation was adapted to the creation of a new and populous social unit where little but open country previously existed, the Urban Development Corporation<sup>3</sup> (really a redevelopment corporation) has to operate in an area (invariably part of a metropolitan district or London borough) which is not open but often heavily encumbered with old and now derelict development; such an area, too, will long have been under the administrative jurisdiction of an urban type of authority, which may or may not have reservations about the expediency of intruding a new body into its midst, and which already has and can exercise most of the necessary powers. Hence the Urdeco is not necessarily armed with the New Town Corporation's range of powers: the government will, mostly subject to parliamentary consent, dole out to it such powers as it cannot do without, and different Urdecos will doubtless end up with different powers. [12]

The Enterprise Zones of Part XVIII represent a different conception altogether. They are not confined to metropolitan districts or London boroughs, but may be anywhere. Though their authority may be a New Town Corporation or Urdeco it is much more likely to be a district or London borough council. Instead of being specially financed in order to redevelop its zone itself,

<sup>3</sup> I forbear to use the initials UDC. For the eighty years before 1974 these invariably referred to the Urban District Councils, whose functions are the legal foundations of district councils powers under the Local Government Act 1972. Hence the portmanteau Urdeco instead.

the zone is a sort of temporary rate and tax haven, which is to be relatively free, too, from the delays and interference of the planning system. By such inducements it is hoped that private enterprise will be attracted and will achieve the necessary investment momentum to bring about a local economic fertilisation. Government finance is accordingly confined to compensation for the temporary loss of rate resources. [13]

### DEFINITIONS OF WIDER EFFECT

Very many sections, as is now customary, contain internal definition provisions, but this Act has in addition many words which are specially defined for groups of sections or for Parts of the Act. There is no comprehensive interpretation section, and though such sections exist for some Parts, they do not always contain all the terms which are not merely internal to one section. In addition some terms are used differently in different parts, and some definitions are repeated, sometimes even in the same words.

The following list of expressions is limited to those which are specially defined for the purposes of sections or enactments other than those in which they themselves appear.

<i>Expression</i>	<i>Defined in</i>	<i>For the purposes of</i>
Act of 1960	s. 177	Part XVII
Act of 1968	s. 177	Part XVII
Act of 1973	s. 115	Part XIII
Agriculture	s. 109	Part XII
Appointed day	s. 23	Part III
Appropriate minister	s. 76	Part VIII
„ „	Sch. 7, para. 5	Highways Act 1971, s. 2 (Now Highway Act 1980).
Appropriate minister's certificate	Sch. 20, para. 3	Sch. 1, para. 10
Area of a new town	s. 133	Part XV
Authority	s. 109	Part XII
Block grant	s. 55	Part VI
Building	Sch. 10, para. 3 s. 31	Sch. 10, paras. 1 and 2 General Rate Act 1967, s. 26A
Capital receipts	s. 75	Part VIII
Caravan	s. 177	Part XVII
Commission	s. 133	Part XV
Commencing year	s. 53	Part VI
Common	s. 109	Part XII
Construction and maintenance work	s. 20	Part III
Corresponding gross value	Sch. 33, para. 6 Sch. 32, para. 6	Land Compensation Act 1961, Sch. 2 Housing Act 1964, s. 78

## *Introduction*

<i>Expression</i>	<i>Defined in</i>	<i>For the purposes of</i>
County	s. 117	Local Employment Act 1972, s. 8
Current ceiling	s. 42	General Rate Act 1967, Sch. 1
Development	s. 109	Part XII
Development Body	s. 20	Part III
Development Corporation	s. 133	Part XV
Disposals	s. 75	Part VIII
Disposing	s. 109	Part XII
DLO Revenue Account	s. 10	Part III
Domestic hereditament	s. 33	General Rate Act 1967 s. 48
Dwelling house	Sch. 32, para. 32	Sch. 32, Part IV
Ecclesiastical property	s. 171	Part XVI
Education expenditure	Sch. 10, para. 3	Sch. 10, paras. 1 and 2
Excluded land	s. 129	ss. 129-130
Excluded operations	s. 117	Local Employment Act 1972, s. 8
Fish farming	s. 31	General Rate Act 1967, s. 26A
Freehold interest	s. 80	ss. 80 and 83
Fuel or field garden allotment	s. 109	Part XII
Functional Work	s. 8	Part III
Gipsy	s. 177	Part XVII
Grant related expenditure	s. 56	Part VI
Grant related poundage	s. 56	Part VI and s. 64
Gross rateable value	Sch. 11, para. 6	Part VI
Gross value	s. 56	s. 64 and Sch. 11
	Sch. 11, para. 1	Land Compensation Act 1961, Sch. 2
	Sch. 33, para. 6	Housing Act 1964, s. 78
Land	Sch. 33, para. 8	Part XII
	s. 109	s. 104
	Sch. 20, para. 5	Compulsory Purchase Act 1965 Part I, other than s. 31
Lease	s. 117	Local Employment Act 1972, s. 8
Local authority	s. 20	Part III
	s. 53	Part VI
	s. 71	Part VIII
	s. 133	Part XV
	Sch. 7, para. 10	Road Traffic Regulation Act 1967, s. 21
Maintenance agreement	s. 5 (1) (a)	Part III
Minister	Sch. 18, para. 15	Sch. 18
Notional hereditament	Sch. 11, para. 2	Sch. 11, para. 1
Open space	s. 109	Part XII
Planning enactment	Sch. 32, para. 26	Sch. 32, Part III

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<i>Expression</i>	<i>Defined in</i>	<i>For the purposes of</i>
Prescribed	s. 68	Local Government Act 1974, s. 10
Private garage	s. 84 s. 29	Part VIII General Rate Act 1967, s. 19
Private storage premises	Sch. 32, para. 32 s. 29	Sch. 32, Part IV General Rate Act 1967, s. 19
Profit basis	Sch. 32, para. 32	Sch. 32, Part IV
Property	Sch. 32, para. 32	Sch. 32, Part IV
Public authorities	s. 80	ss. 80 and 83
Public body	Sch. 19	s. 103 (5)
Rateable values	s. 93 and Sch. 16	Part X
Recoupment	s. 56, Sch. 11, para. 1	Part VI, s. 64, and Sch. 11
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Unoccupied property	s. 42	Town and Country Planning Act 1971, s. 113
Unspecified hereditament	s. 30	General Rate Act 1967, Sch. 1
Urban development area	s. 134	General Rate Act 1967, s. 19A
Urban development corporation	s. 135	Part XVI
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		Part X

## *Introduction*

<i>Expression</i>	<i>Defined in</i>	<i>For the purposes of</i>
Works contract	s. 5	Part III
Year	s. 68	Part VI
	s. 85	Part VIII
1946 Act	s. 109	Part XII
1967 Act	s. 171	Part XVI
	Sch. 32, para. 32	Sch. 32, Part IV
1970 Act	s. 5	Part III
1971 Act	s. 109	Part XII
	s. 171	Part XVI
	Sch. 32, para. 8	Sch. 32, Part I
	Sch. 32, para. 26	Sch. 32, Part III
1975 Act	s. 109	Part XII
	Sch. 17 para. 1	Sch. 17 [14]





# THE LOCAL GOVERNMENT, PLANNING AND LAND ACT 1980

(1980 c. 65)

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