



ScotPHN

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Scottish Public Health Network (ScotPHN)

An Overview of Local Authority Powers Relating to Public Health

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Preface

From its earliest years, the practice of effective public health has been in the business of understanding how the civil (and criminal) law helps to create and maintain the health of the public we serve. Over time, such laws have become less the business of professionals who contribute to the public's health and more the responsibilities of the agencies – especially local authorities – and their officers.

As a result of which the people who work in public health have become less knowledgeable about the statutory frameworks and the duties and powers they contain. At the same time, as public health in Scotland is seeking to become more focussed on a whole system approach to public health, with a renewed emphasis on the contributions of our local authority partners in community planning, and integration authorities.

This document is intended to help busy public health professionals understand better some of the key powers that are vested by statute in Scottish local authorities which help protect and improve the health of local populations. It is not exhaustive, nor can it be treated as an authoritative statement on what must be done, but it does help us to explore what the power is, how it seems to be interpreted, and how it may be used.

But, perhaps most important of all, it provides a way of help us reconnect with the way in which our local authority partners practice and deliver public health.



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1. Introduction

Aim

This document is a snapshot of the powers granted by law to Local Authorities in Scotland that relate to Public Health. It is largely based on information drawn from secondary sources, with wider contextual information provided where possible by local professionals with experience in the use of such powers.

It aims to support public health and health improvement colleagues' understanding of the opportunities and limitations of using such powers in delivering better health and wellbeing. For some colleagues, given their focus on activity in local areas and their practical experience of working with Local Authority staff, it is anticipated that there will be some familiarity with many aspects of this document. However, it is hoped that the report at least brings all of this information into a single place. It may also allow public health and health improvement colleagues to identify and align evidence, data, advice and engagement across some of the themes identified below, when moving towards a greater degree of "whole system" working.

The state of public health or health improvement engagement with Local Authorities is not considered by this work, though making further headway in relation to the use of Local Authority powers is clearly dependent on engagement and on public health and health improvement influence. That public health and health improvement colleagues are shaping and influencing their Local Authority partners is clear. At the local level the picture is bound to be complex, reflecting a wide range of local circumstances, opportunities and the current and historic availability of resources. In this situation it is hoped that the current report would help support more broadly based engagement with colleagues within Local Authorities and amongst community planning partners.

Scope

This document looks specifically at the powers of Local Authorities across a wide range of policy areas that relate to Public Health. It looks at those powers that, if applied successfully, could positively impact, directly or indirectly, on the environmental, economic and social factors that shape physical and mental health. However there are some important limitations that must be noted.

1. Given the range of Local Authority activities, and the challenge of identifying powers across a scattered evidence base, it cannot be assumed that this list of powers is comprehensive. It is also a challenge to determine how, and where, many of the powers listed in this document are used successfully without some attempt to survey all Local Authorities in Scotland, which is beyond the scope of this work.

2. Whilst recognising that public health problems and solutions are complex and require a blend of activities at local and national level by various actors working in tandem to achieve change, the report does not consider which of the powers, or combination of powers identified below could, if successfully implemented, be most useful in having a positive impact on a particular public health problem. This might be a worthwhile future iteration or spin off from this work.
3. The work does not consider how Local Authorities might use a specific power to fulfil its functions. Nor does it look at the ways in which using a power may vary from Local Authority to Local Authority.
4. The report specifically does not attempt to provide legal advice or advice around how the use of certain powers might achieve a particular outcome. Moreover the complexity of the law and the powers contained within the legislation is not easily conveyed in the short paragraphs about each power provided below. How the powers might play out 'on the ground' within the context of ever changing social, physical and commercial environments, would present a significant challenge and is clearly outwith the scope of this work. That is not to say that accessing legal advice that may generate a better understanding of how powers, and duties, may be applied, would clearly be of benefit for public health and health improvement staff for some of the issues highlighted below.

Method

There is no central repository of Local Authority powers. The powers listed below have been identified from a wide range of secondary sources, particularly legislative, Scottish Government strategy, guidance and policy documents and Glasgow City Council's overview of their duties and powers.¹ These sources do not necessarily tell us if powers are applied, how they work, or why they succeed or fail.

To support this largely desk-based exercise, further information and opinion has been generated by conversations (i.e. not formal qualitative interviewing) with a number of contributors based within Local Authorities, the third sector and 'pressure groups' around the identification of powers, how they think some powers have been or could be used, as well as providing information about the wider context. A number of organisations were e-mailed to introduce this work, and most responded favourably. It was not possible however to identify contributors across all of the topic areas identified below and it would be particularly useful to e.g. explore some of the issues around alcohol licensing and gambling.

Document Development and Feedback

The content of this document is not 'set in stone'. The legislative landscape around powers will always change and it is important to be aware for example that the Transport (Scotland) Bill² and the Planning (Scotland) Bill,³ which proposes major changes to the planning system,⁴ are currently working their way through the Scottish Parliament. These could impact on the powers listed below and bolster how Local Authorities pursue activity across a number of policy areas. New legislation, powers and issues or challenges around how powers might or might not be used, can be incorporated into this document as they emerge.

It is hoped that those who receive this document will provide feedback in terms of its usefulness and how it may be developed further. Contributions in terms of information to support its ongoing development and to highlight key gaps or errors are welcome.

2. Powers, Duties and Local Authorities

2.1. The Powers and Duties of Local Authorities

When a Local Authority in Scotland provides a social care service, or builds a road, creates a new public park, or undertakes any activities, it does so within the scope of a framework of its roles and responsibilities that have been set out in law. These statutory frameworks not only describe the activities (or functions) that the Local Authority provides for local people, they also set out whether the Local Authority must provide the activity or function.

Those services or activities that are set out as a statutory (or sometimes a mandatory) duty, are considered to be a “must do” for the Local Authority. For example, they have a statutory duty that requires them to deliver a range of services. Two common statutory duties are the provision of education for 5 to 16 year olds and of social work services. It should be remembered though, whilst a statutory duty of a Local Authority sets out that something must be provided, it usually does not say how it is provided. That is for the Local Authority to decide.

Local Authorities also have a range of functions that they can provide. These are what statutory frameworks set out as discretionary powers to deliver certain types of services, manage how some activities are undertaken through enforcing legal requirements, or by imposing fines. Powers used in this way are called regulatory powers and include activities such as maintaining trading standards, protecting environmental health and licensing for taxis.⁵

In addition to regulatory powers, Local Authorities also have permissive powers that can be used to make changes across the broader economic, social and physical environment, especially when Local Authorities use their powers to help deliver locally agreed plans: for example, in supporting economic development and regeneration or building a new leisure centre.

As with statutory duties, a power allows the Local Authority to undertake activities for the local public. But it does not describe when or how the power is to be used. Again this is for the Local Authority to decide. A further complication is that how and when a power was set out in law can be a source of uncertainty. Sometimes the nature of the power is clear, but not always. In some cases, Local Authorities have been given ‘powers’ where it is not clear what the power actually is or how it could be used.

In relation to providing services or activities that can improve, protect, or care for the health of the public, it is important we make best use of these duties and powers. Especially as many of these duties and powers relate more directly to the social, economic and environmental determinants of health and provide

opportunities for addressing the types of inequalities that underpin poor health and wellbeing.

2.2. Barriers and Facilitators in the Use of Powers

The barriers, and the desire to use powers, will not exist in the same way from Local Authority to Local Authority, and much of this will depend, presumably, on the size of the Local Authority, the blend of urban, rural and remote rural environments, the profile of the local population, the local social, economic and physical context, local need and opinion (and how forcefully this might be articulated) as well as the political context. The latter will shape local decision making, and therefore which powers are used, based on:

- the local political make up, the local political party in power and political aspirations;
- political leadership – Local Authorities are not necessarily viewed as lacking in powers, but they might be viewed as lacking the political leadership to apply those powers in certain areas of their work;
- the political party in power at local level is keen to reflect the ambitions of the party in power at national level (of the same political hue) and may be more inclined to use powers to achieve particular outcomes;
- varying levels of support within political parties, locally and nationally, for the use of particular power(s);
- whether those in power at local level can form a majority or minority and the latter, forming a minority, is likely to engender a greater need for negotiation around what may or may not be achieved (Local Authorities in Scotland are currently led primarily by minority administrations or coalitions);
- local needs and how those are defined and prioritised by political leaders;
- the enthusiasm of local elected members, and non-elected council officers, to achieve an outcome;
- the aspirations of those in power at national level;
- how policy and resources are prioritised at national level, which then cascades down to determine, inform and support how policy is prioritised at local level; and
- how the local and national media construe and respond to a problem and the proposed Local Authority ‘solutions’.

Moreover, although there are a range of views, the political landscape in Scotland has been perceived by some commentators as one that has centralised power and this continued, long-term pursuance of the concentration of power at government level, has been at the expense of local government autonomy. Devolution, and the ongoing devolvement of power to Scotland is perceived therefore as failing to sufficiently devolve power out to communities,⁶
^{7 8 9 10} although this perceived tendency is not necessarily unique to Scotland,

within the context of the UK.^{11 12} The most recent Scottish Government Budget might be viewed, however, as seeking to reverse this to some extent by handing further powers to local government e.g. in the form of the proposed workplace parking levy (see below), the 'tourism tax' and increasing the cap on council tax increases.¹³

It may be argued that Local Authorities frequently have the task of seeking to do things, such as the removal of car parking, that make a change at the micro level to achieve the aims of government targets, that sections of the local population and the press object to, and that local councillors and local political party members find hard to sell. This means that as one Local Authority based contributor pointed out, elected representatives often find themselves in the position of having to persuade local populations of the benefits of change, using as compelling a story as possible about a particular action that people understand in order to build support.

In addition to local opinion, there are likely to be a wide range of factors that shape or prevent the use of powers and a non-exhaustive list of these factors might include:

- the current financial situation for Local Authorities, and austerity leading to resource prioritisation and retrenchment where activity, beyond Local Authority duties, is reduced;
- the burden of delivering frontline services, amid rising demand, versus the pursuit of powers, and strategic work, whose benefits may not be realised for some time;
- the application of powers can be staff and time intensive and demand financial resources that Local Authorities do not have or must bid for from various sources (those sources might be deemed inadequate);
- forums that might be supportive, and understand the need for the use of a power are equally strapped for cash and so can offer no financial assistance;
- complexities and time-scales around how the power might be implemented, e.g. Traffic Regulation Orders (see below) that might be slow to implement, street by street, and that are buffeted by public and business objections and that might then lead to the need to hold an inquiry into the proposed TRO;
- the capacity, time and resource to research the potential or real impact of a power;
- the potential negative knock-on effects of applying powers;
- the blend of capacity and prioritisation; if an activity is prioritised then surely capacity should follow this? If it is not prioritised, then capacity will not follow;
- lack of innovative work in order to test the boundaries of the available powers;

- not applying for funding from the available sources, and hence not having the opportunity to test and apply a power;
- lack of control over aspects of the local environment that impact on how a power might be pursued, and its success;
- the need to communicate information about the use of powers to the broader community via various channels, prior to their introduction (and to actively engage with communities around the use of powers);
- tensions inherent in Local Authority policies that seek to generate revenue or that e.g. support arguments around the creation of economically viable spaces (such as the provision of car parking spaces) that do not align with policies and powers that aspire to do something else e.g. reduce the number of cars coming into a town centre and the championing of public transport;
- concerns around the inability of Local Authorities to enforce some of their powers, e.g. that might require their own staff or others such as the police to enforce, and who may lack capacity to do so. Lack of capacity might act as a disincentive to the use of a power - and where powers cannot be enforced this raises questions about how worthwhile it is to seek to apply them in the first instance; and
- the use of Arms-Length Organisations (ALEOs) was mentioned by one contributor as muddying the water.

For several contributors to this work, the problem was not necessarily that the powers were not being applied, the source of their frustration was the wider context around which the Local Authority was deemed to be powerless. As one health improvement specialist pointed out, while the Local Authority could be seen to be using its powers to provide resources and opportunities, the barrier they believed was primarily income related and this included around how those on limited incomes e.g. might pay for public transport to reach those resources. This cannot easily be addressed by Local Authorities.

2.3. Austerity, Financial and Staffing Challenges

Local Government funding in Scotland, as in the rest of the UK, is not particularly advantageous with a 6.9% real terms reduction in Scottish Government revenue funding since 2013/14 and a financial outlook that will include further reductions in funding.¹⁴

It is estimated that there are 30,000 fewer staff working in local government than a decade ago and that 90% of all austerity related job cuts have been in local government, thus placing pressure on existing staff, limiting opportunities for innovation and future planning, within a wider context of rising demand for services and welfare reform. Cuts in spending are estimated to have been greater in more deprived Local Authority areas than in more affluent areas, with increases in Local Authority fees and charges in an attempt to offset budgetary pressures, and thus more likely to impact on those with lower incomes, who are already more dependent on public services.¹⁵ There has been a reduction in

spending for non-protected areas of activity (e.g. roads, employment support, economic development) although COSLA indicate that councils have protected services to the most vulnerable where possible.^{16 17}

Clearly financial pressures will challenge the extent to which Local Authorities are able to fund and staff the services they must provide (duties) as well as deliver on activity they do not have a statutory duty to provide (powers). The extent to which they choose to pursue the latter will depend on the local context, priorities and the political make-up, and if they are able to pursue the latter, when the financial backdrop is not necessarily positive, may remain a challenge in the long-term, necessitating a change in how some services may be funded and managed.

Where powers are not used or are under-used, the power and any transformative change they could offer is effectively lost. This requires therefore a better understanding of why powers dispensed to Local Authorities by Scottish Government are not used or cannot be used particularly easily or effectively and this might be for a range of demonstrable reasons such as being subject to legal challenge, lack of resource to enforce the powers or because the wider financial and staffing context is not particularly favourable.

3. The Powers

3.1. Advancing Well-being

Background

Arguably, all statutory agencies have powers which indirectly contribute towards improving and maintaining well-being.

Local Authorities

Local Authorities have the power to advance well-being:

- Local Government in Scotland Act 2003

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

- (a) its area and persons within that area; or
- (b) either of those.¹⁸

The Scottish Executive stated in 2003 that the power was a wide ranging one to advance well-being and to encourage innovation and closer partnership working between Local Authorities and other bodies to respond to community needs. It would enable Local Authorities to do anything they considered likely to promote or improve the well-being of their area and/or persons in it. The power was a 'first resort' when Local Authorities were in doubt about whether existing powers would enable them to take a particular course of action.

Local Authorities have the power to promote the economic, social and environmental well-being of their areas and communities. Activities might include tackling climate change, poverty, reducing inequalities, promoting equalities, promoting economic development, improving health and enhancing service delivery.

Barriers to the Use of Powers

The power appears to be wide, but there are various caveats attached to its use and whatever Local Authorities wish to do must be in accordance with the law. They must not duplicate the legislative functions of other bodies or raise money by levying any form of tax or charge.¹⁹

Examples of how this power is used are not particularly easy to identify from the literature. Examples provided to this piece of work include around summer school food provision, data gathering exercises and addressing the costs associated with attending school as well as promoting economic development.

As one contributor pointed out, from the perspective of a health improvement practitioner, this power may provide opportunities for practitioners to present

Local Authorities with evidence or data to encourage activity around a particular issue that could not be addressed under any other legislation.

3.2. Air Quality, Active Travel and Transport

Background

At national level, recent statistics on car use, public transport and road building have not necessarily been deemed particularly positive. While train and ferry use has been increasing, bus use has been falling and car traffic increasing, with more licence holders than at any other point. Cycle traffic has decreased but distance cycled has increased.^{20 21} As has been pointed out by Transform Scotland for example, transport investment might be characterised as one that has favoured unsustainable transport options in the form of increased investment in road building (a 34% increase since 2011/12) over public transport use.

This raises questions about how far the Scottish Government has made progress in reducing transport emissions (a 2% fall since 1990) and how this benefits the third of all households in Scotland who do not own cars and depend on public transport. Moreover, motoring costs have fallen as the costs of rail and bus transport have risen for users, deemed socially regressive.^{22 23 24} It is also worth noting that at national level, the Strategic Transport Projects Review (published in 2009), which sets out the Scottish Government's 29 transport investment priorities over the period to 2032 did not prioritise active travel. A proposed update is set to include active travel.^{25 26}

It is against this background that the Scottish Government is doubling funding for active travel projects to £80m for 2018/19. Much of this is distributed across active travel delivery partners (e.g. Sustrans, Cycling Scotland), who then distribute funds, or match fund, across Local Authorities and other groups,²⁷ with additional sources of funds for Local Authorities including the European Regional Development fund and the Scottish Government's Cycling, Walking, and Safer Streets grant. Other sources of activity in Local Authority areas might include Transport Scotland's Trunk Road Cycling Initiative, which aims to benefit non-motorised users of road schemes. The Scottish Government's active travel budget however has formed a small proportion of the overall transport budget, 1.9% (when £40m for active travel) of the £2,125m transport budget for 2017/18, with the total expenditure on motorways and trunk roads in 2017/18 estimated at £620m.^{28 29 30}

Local Authorities

Local Authorities are tasked with supporting the shift towards active travel and within their powers they may seek to achieve this by e.g. developing local strategies, adapting the local environment, incorporating active travel and public transport options into the planning of new developments, housing and school routes, and using powers to reduce vehicle speed and car use and speed around schools.

A non-exhaustive list of the types of potentially beneficial activity, that are, in the main, within the gift of Local Authorities in seeking to increase active travel and public transport use, and to reduce emissions, includes:

Cycling, walking:

- the creation of more space for cycling and walking, with reduced space for cars
- networks of safe, segregated cycle lanes
- full or part pedestrianised streets and thoroughfares

Car ownership:

- housing developments that do not rely on residents to own and travel by car, i.e. that factor in and incorporate active travel and public transport
- integration of electric vehicle infrastructure, and incentives for use

Car parking:

- removal of car parking spaces
- removal of free Sunday parking (e.g. as in Aberdeen, Dundee and Glasgow – and to begin in Edinburgh³¹)
- workplace parking levies, i.e. charging for workplace car parking (proposed)
- implementation and enforcement of parking restrictions, as a means of e.g. dealing with pavement and road hazards for active travel

Emissions:

- roll out of low emission zones
- Public transport:
 - improvements in bus networks
 - the installation of bus lanes
 - retrofit of bus engines (Scottish Government led)

Schools:

- car free zones around schools

Speed:

- 20mph speed limits in residential areas, and around schools.

Various powers deal specifically with some of these. The Transport (Scotland) Bill, currently at stage 2 in the Scottish Parliament, and which may be further strengthened in view of criticism of what it proposes to do, could provide greater opportunities for Local Authorities to address some of the activities listed above, such as the workplace parking levy and bus transport. The application of a default 20mph speed limit by Local Authorities has recently been considered by the Scottish Parliament (Restricted Roads (20mph Speed Limit) (Scotland) Bill³²) but was rejected, although Local Authorities retain an existing power to apply the 20mph speed limit where they wish to do so.

The available evidence indicates that several Local Authority powers that could lead to improved air quality, for example, appear to be under or not used e.g. Fixed Penalty Notices for engine idling, the roadside testing of vehicles by Local Authorities to identify the most polluting vehicles and road congestion charging.

(One argument is that Local Authorities should actively seek to generate revenue from their ability to use such powers to support activity that increases active travel and improves public transport networks. The extent to which car parking fines and other motorised transport related penalties might be subsidising active travel or public transport is unclear.)

Barriers to the Use of Powers

There are bound to be various reasons, as noted in the introduction, for non-use and under-use of powers. Further barriers to the use of active travel, transport and air quality related powers are likely to include:

- difficulties around time and staff resource attached to applying powers (such as Traffic Regulation Orders). One Local Authority contributor commented that the process of applying such orders, to make changes around who might use a road and for what purpose, was a slow process, and one where change cannot be made as quickly as desired;
- lack of sufficient funding opportunities, and the time and staff resources required to seek funding from various sources;
- opposition from local residents;
- the nature of the urban environment, e.g. the notion that some cities are more compact than others, and so lend themselves better to active travel interventions;
- opposition from commercial interests, such as bus companies;
- possible preference for the use of other powers and mechanisms to achieve local environmental change; and
- reluctance by local politicians, and national government, to sufficiently challenge car users, who comprise a broad swathe of the electorate (those who do not own cars tend to be drawn from lower socio-economic groups), beyond tinkering at the margins of policy.

Additionally, Local Authorities in Scotland have highlighted various barriers around how far they are able to implement national government aspirations to increase active travel at a local level. In summary, these include:

- a need for strong national and local leadership around active travel;
- lack of connectivity between national ambitions and local capacity;
- a cluttered, un-coordinated policy landscape;
- loss of staff with skill sets suited to active travel work;
- lack of prioritisation of this work in some Local Authorities;
- a culture supportive of car use;
- problematic one year funding cycles;
- higher costs of retro-fitting versus building new walking and cycling paths;
- outdated design guidance/ standards for active travel infrastructure;
- onerous processes around the use of Traffic Regulation Orders; and

- inadequate evidence, public consultation and active travel promotion.

Moreover, essential to the provision of active travel is the need for connections into a 'reliable, comfortable, efficient and affordable public transport system', with cycle friendly public transport and infrastructure such as bus shelters.³³

In terms of public transport, it is worth pointing out that there are aspects of the local environment that are clearly beyond the control of Local Authorities. For example, there are misgivings around the perceived failure of bus companies in Scotland to sufficiently access the Bus Emission Abatement Retrofit (Bear) programme funds (£1.1.m of the £7.9m fund was used 2018/19) to fit retrofit technology measures to reduce emissions to Euro VI standard or better, with bus companies that did not draw on the funds citing the 40% Scottish Government contribution to this (i.e. bus companies contribute the remaining 60%) as inadequate.³⁴

Commercial bus companies, as most bus services are, operate beyond Local Authority control as the restrictions around Local Authority bus ownership means that they may only provide subsidy for services that are not provided on a commercial basis. Local Authorities in effect have little control over the priorities and preferences of commercial bus companies, and whose services Local Authorities rely on, requiring a balancing act between environmental aspirations and the aims of private sector transport providers. Moreover bus companies are just one of a number of lobbying groups, whose views must be given weight in Local Authority decision making. How far the needs of particular lobbying groups are given preference over others is a moot point.

Bus use is declining, and fares rising.³⁵ The Transport (Scotland) Bill³⁶ is viewed by the Scottish Government as providing, potentially, some opportunity for Local Authorities to have greater control over local bus services although this is disputed by trade unions and political opponents.³⁷ Changes to the Bill have been proposed to address falling levels of bus travel and bus service provision.³⁸

Listed below are a range of Local Authority powers that could make local environments more conducive to active travel, increase public transport use, improve air quality or some combination of these.

3.2.1. Air Quality

Background

Air quality management in Scotland falls primarily on Local Authorities. SEPA regulates industrial emissions and acts in an advisory capacity. Local Authorities can apply for government funding to support the monitoring of air pollutants and the implementation of air quality management plans through several funding schemes, with variation in the funds allocated to Local Authorities, and lack of ring-fencing, allowing Local Authorities to determine how to use these.³⁹

Part IV of The Environment Act 1995 requires the UK and devolved administrations to publish an Air Quality Strategy and establishes the system of Local Air Quality Management (LAQM). The air quality objectives set out in the following regulations provide the statutory basis for this:

- Air Quality (Scotland) Regulations 2000
- Air Quality (Scotland) Amendment Regulations 2002
- Air Quality (Scotland) Amendment Regulations 2016

Under the 1995 Act, Local Authorities are required to regularly review and assess air quality, consider current and likely future air quality in their areas, and assess if objectives will be achieved by the due dates and beyond. They have a duty under section 83(1) of the 1995 Act to designate AQMAs (Air Quality Management Areas) where the air quality objectives are unlikely to be met by or beyond the required date.

AQMAs must be designated officially by means of an order. The authority must prepare and implement an action plan outlining how it intends to tackle the issues identified. Local Authorities are not legally obliged to meet the objectives but they must demonstrate that they are taking all reasonable steps in working towards them. The 1995 Act does not prescribe any timescale for preparing an action plan but the Scottish Government expects them to be completed within 12 months following the designation of any AQMAs.⁴⁰

Local Air Quality Strategies

- Part IV of the Environment Act 1995

Local Authorities do not have a statutory obligation to prepare or adopt a local air quality strategy. However, the Scottish Government recommends that all authorities, particularly those that have not had to designate AQMAs but have areas close to the exceedance levels, should consider drawing up a strategy. It expects a multidisciplinary approach to LAQM and co-operation between Local Authorities and other sectors (including the NHS).

It is keen that Local Authorities act as a catalyst and communicate their commitment to delivering cleaner air in a local air quality strategy (e.g. by running some of their own or contractor vehicles on alternative fuels, encouraging staff public transport use, green purchasing policies). Moreover air quality action plans and local air quality strategies should be consistent with, and where appropriate, linked to Local Transport Strategies.⁴¹

The following are examples of powers that could be or are being used and that could improve local air quality.

Low Emission Zones

- The Road Traffic Regulation Act 1984
- The Transport (Scotland) Bill 2018 (progressing through the Scottish Parliament)

Three mechanisms support the creation of Low Emission Zones:

- The Road Traffic Regulation Act 1984 enables Local Authorities to make a Traffic Regulation Order to prohibit or restrict the use of certain vehicles on certain roads for certain purposes including air quality management
- The Environment Act 1995 enables Scottish Ministers to make regulations prohibiting or restricting the access of vehicles or mobile equipment to areas prescribed in the regulations
- Air quality related Traffic Regulation Conditions can be attached as licence conditions in respect of buses by the Traffic Commissioner for Scotland, on the application of the Local Authority.⁴²

More recently however, the Scottish Government set out plans to create a Low Emissions Zone (LEZ) in one city by the end of 2018 and to work with Local Authorities towards introducing LEZs in the biggest cities by 2020 and to all Air Quality Management Areas by 2023.⁴³ Following approval by the Traffic Commissioner for Scotland for a Traffic Regulation Condition, the first LEZ is now operating, although some details are yet to emerge, in Glasgow city centre. It currently applies only to the most polluting local bus services, but it will apply to all vehicles by 2022. Glasgow's LEZ will be enforced using automatic number plate recognition cameras rather than the charging scheme applied in London (see Box 1 below) for those vehicles that do not meet emissions criteria, with penalty notices for those who do not comply with the charge.

The emission standards for the Glasgow LEZ are Euro 4 for petrol cars, vans, minibuses etc., Euro 6 for diesel cars, vans and minibuses etc. and Euro VI for lorries, buses and coaches and other heavy diesel engine vehicles.⁴⁴

Critics of the Glasgow LEZ, including Friends of the Earth Scotland, suggest that the initial focus on buses will not significantly impact on levels of air pollution in the immediate future and their preference would be for buses, vans, and lorries to be included at the initial stage of implementation, with taxis and

cars included at a later stage (although Friends of the Earth acknowledge that the LEZ is taking place in tandem with other activity in the city including the expansion of the local cycle network).^{45 46}

The Transport (Scotland) Bill, introduced and currently at stage 2, aims to create a system allowing Local Authorities, alone or working together, to operate LEZ schemes. LEZ creation will depend on approval by Scottish Ministers and consultation with SEPA, Scottish Natural Heritage, Historic Environment Scotland and representatives of local business and transport providers etc. Local Authorities and Scottish Ministers will have powers to hold an inquiry into a proposed LEZ.⁴⁷

The City of Edinburgh expects to introduce a LEZ by 2020, with enforcement from 2021, with buses, coaches and commercial vehicles affected first (by end of 2021), followed by cars (by end of 2024). LEZ proposals seek to exclude cars from a city centre boundary that do not meet certain emission standards (Euro 4 standard for petrol engines, Euro 6 for diesel engines) with penalties for those vehicles that enter the LEZ, with buses, coaches and commercial vehicles that do not meet emission standards also affected by a city wide boundary, with a grace period to 2023.⁴⁸

Box 1:

For comparative purposes the London (Transport for London) schemes include a LEZ (covering most of greater London, 24 hrs, 7 days a week) to encourage activity to address emissions from the most polluting heavy diesel vehicles. From 2020 emission standards for the LEZ will be further tightened.

An ultra LEZ (ULEZ) now also operates in central London, with vehicles required to meet emission standards or pay to drive in the ULEZ zone or risk Penalty Charge Notices of several hundred pounds. The ULEZ (operating 24 hrs, 7 days a week) and a separate congestion charge (which operates on week days, between 7am and 6pm) operate across the same geographical area. The congestion charge is £11.50, the ULEZ charge is £12.50 for cars and vans and £100 for heavier vehicles that do not comply with ULEZ vehicle standards (which are consistent with those for Glasgow, noted above).⁴⁹

Traffic Regulation Conditions - Air Quality

- Public Service Vehicles (Traffic Regulation Conditions) Amendment (Scotland) Regulations (2008) (an amendment to the Transport Act 1985 by the Transport (Scotland) Act 2001)

Air quality related Traffic Regulation Conditions (TRCs) can be attached as licence conditions in respect of buses by the Traffic Commissioner for Scotland, on the application of the Local Authority. Local Authorities may ask the Traffic Commissioner to attach a TRC to an operator's Public Service Vehicle licence for the purposes of reducing or limiting air pollution. The 2008 regulations do not specify how bus emissions should be regulated, but the most straightforward method would be to specify the minimum Euro standard that vehicles affected by the TRC would have to meet. Any application made by a Local Authority must satisfy the Traffic Commissioner that there is a compelling case for doing so. A transport authority or bus company with services that are, or will be, operated in the area affected by a TRC can ask the Traffic Commissioner to hold an enquiry.^{50 51}

Road User Charges

- The Transport (Scotland) Act 2001

Local Authorities are, under the Roads (Scotland) Act 1984, designated as the roads authority for their area. They are responsible for all aspects of the non-trunk road network within their jurisdiction.⁵² They have the power to introduce road user charging (congestion charges) schemes on local roads, excluding trunk roads, under Part 3 of the Transport (Scotland) Act 2001 and Road User Charging Schemes (Keeping of Accounts and Relevant Expenses) (Scotland) Regulations 2004. The charges can be varied according to any of the following: day of the week; time of day; road; distance travelled; purpose of the journey; number of occupants; and class of motor vehicle.⁵³ (See Box 2 below – there are currently no Scottish road user charging schemes, but there are several in other parts of the UK).

These powers are viewed as providing an additional source of income to fund improvements to local transport. Any revenue raised can be recycled locally. Before schemes can be introduced, Local Authorities must demonstrate that they have improved public transport to ensure that people have good alternatives to car use.⁵⁴

Box 2:

Edinburgh City Council developed a charging scheme, leading to an application for ‘approval in principle’, the first stage of the consultation and approval process set out in Scottish Government guidance, and opted for a local referendum. Approval was granted by Ministers in December 2002. The statutory procedures to promote a charging order were initiated in September 2003, with formal consultation in late 2003. The final proposals (a £2 daily charge to enter the congestion zone) were examined at a public inquiry in Spring 2004. The scheme was rejected by 74% of Edinburgh residents on a turnout of c62%. Congestion charging was abandoned.⁵⁵ Glasgow City Council appears to have abandoned plans for congestion charging.⁵⁶ The only active UK schemes are in London and Durham.^{57 58}

Electric Vehicles

- The Environment Act 1995
- Climate Change (Scotland) Act 2009

The national strategy background for electric vehicle use (Switched On Scotland (2013), a subsequent review (2016) and phase two of the strategy, (2017)^{59 60} aims for communities to be free of the effects of petrol and diesel fuelled vehicles by 2050. To support this the Scottish Government aims to phase out the need for new petrol and diesel cars and vans by 2032 and to promote electric vehicles (EVs), expanding EV charging infrastructure between 2018-2022, creating an ‘electric highway’ (the A9), accelerating public sector procurement by the mid-2020s and commercial bus fleets by early 2030s, with large scale pilots to encourage private EV use.⁶¹ (There were around 7,831 plug-in electric vehicles, so presumably not including hybrid vehicles, in Scotland at early 2018).⁶²

Local Authorities are deemed best placed to support and incentivise EV adoption.⁶³ As well as drawing on several funding streams¹, flexibility exists for Local Authorities to make changes (to favour EVs) around parking, planning and building regulations, taxis and private hire vehicles.

Parking may encourage EV uptake via preferential parking spaces (reducing parking spaces for higher emission vehicles) and reduced or free parking costs for EVs e.g. in Edinburgh cheaper parking permits are offered to residents with low emitting vehicles.⁶⁴ However, Transport Scotland (as at 2016) has stated

¹ UK and Scottish Funding streams for Local Authorities include / have included *ChargePlace Scotland* (for charge points), *Switched on Fleets* (funding new vehicles), UK Government Office for Low Emission Vehicles (to install charge points), *Switched on Towns and Cities* (to increase uptake of electric vehicles), The European Regional Development Fund (via Transport Scotland) to support low carbon travel and transport hubs, *Go Ultra Low Cities* (Dundee City has received funding) and UK Government Ultra Low Emission Taxi Infrastructure Scheme (Dundee City has received funding).

that there is considerable potential for Local Authorities to introduce measures to increase the number of EVs on the road.

Traffic Regulation Orders and Experimental TROs (18 month duration)² can be used to achieve some of this or at least trial measures (obtaining TROs may prove problematic for less well-resourced or smaller Local Authorities). TROs regulate, restrict or prohibit the use of any road or part of the road by vehicles or pedestrians at all times or certain times. TRO powers are provided under the Road Traffic Regulation Act (1984).⁶⁵

In terms of planning and building regulation, Transport Scotland (as at 2016) have indicated that Local Authorities consider:

- Using the planning system to support EV adoption e.g. developer contributions could fund infrastructure for existing developments;
- Raising EV awareness with developers at the start of the planning process;
- Including consideration of charge points in Local Development Plans; and
- Working with stakeholders to create common guidance on elements of the planning process such as car park zoning and minimum charger standards.

Local Authorities may also provide EV drivers with access to dedicated road space, such as bus lanes (using TROs to do so), although barriers include the availability of appropriate bus lanes, the requirement for ministerial approval to change bus lane signage, enforcement problems, as well as public and political resistance.

Given that Local Authorities are responsible for taxi and private hire licensing as set out in the Civic Government (Scotland) Act 1982 they have discretion to determine licensing arrangements according to local needs. Local Authorities can offer reduced licence fees and offer more licenses (to EVs), stipulate the minimum number of EVs, offer contributions towards the costs of EVs, provide dedicated taxi ranks for EVs and stipulate use of EV taxis and car clubs by the public sector.⁶⁶ (See Box 3 below for information about Dundee.)

² Changing or introducing a TRO is a two-stage statutory process. Firstly, a local consultation phase on the proposed TRO takes place, this is followed by a period of advertising the proposed TRO to the public to allow for formal objections to be lodged. The TRO then goes before an internal Local Authority committee. Successful proposals are subsequently approved by senior management or elected officials before being implemented. Source: <https://urbanforesight.org/wp-content/uploads/2016/11/REP-1409-TS-A-National-Framework-for-Local-Incentives.pdf>

Box 3:

Dundee City Council has the largest EV fleet in the UK (c.96 vehicles) and aims to make all of its fleet EV by 2025. Part of the initial interest in EV, in terms of the council's fleet, stemmed from a desire to reduce spend and to rationalise, from non-electric vehicles distributed across various departments to purchasing EVs falling under the auspices of one corporate department. A further incentive was the perception of EVs as less prone to the need for mechanical intervention.

The council is viewed as being at the forefront of EV promotion and adoption in taxi fleets by deploying chargers for taxi use in the city (the '203020' taxi company in Dundee were the most used charging point in Scotland in 2017) and they have changed the local licensing regime to encourage drivers to switch to EVs (there are 112 fully electric taxis and private hire vehicles in Dundee, making up 15% of the city's taxis).^{67 68} This is viewed as a product of Local Authority ambition, the use of incentives in the taxi licensing regime, matched by enthusiasm of a local taxi company owner, with funding from several sources (Office For Low Emissions Vehicles (OLEV), Transport Scotland and Air Quality funding).

The council has received funding from various sources including Scottish Government, OLEV (within UK DfT), with OLEV funding approaching £2m. This has been used to develop charging 'hubs' for use by the public and taxis.⁶⁹ Access to car parks, and chargers for EVs is free (not for hybrid vehicles) for Dundee residents and to incentivise those with EVs outside Dundee to visit the city. As at late 2018 the council owned 62 charging points at 13 public charging locations.⁷⁰

In terms of how far the council might be able to supply electric chargers, including in tenement buildings (with various logistical problems attached to this) the ambition is to place EVs within a broader ambition of reducing car use, increased public transport use and active travel; hence avoiding mass charger provision. Further plans include developing an EV car club in the Lochee area, for those with low incomes to attend essential appointments. Dundee has been named the most visionary European city by the World Electric Vehicle Association.⁷¹

Vehicle Idling

- Section 88, Environment Act 1995
- The Road Traffic (Vehicle Emissions) (Fixed Penalty) (Scotland) Regulations 2003

Local Authorities have powers to tackle emissions from stationary, idling vehicles (both private and commercial). Local Authorities may apply Fixed Penalty Notices of £20 to those allowing a vehicle to idle.⁷²

The Local Authorities which currently undertake idling enforcement are:

- East Dunbartonshire
- East Lothian
- East Renfrewshire
- Falkirk
- Glasgow
- Midlothian
- North Lanarkshire
- Renfrewshire
- South Ayrshire
- South Lanarkshire
- Stirling
- West Dunbartonshire
- West Lothian.⁷³

In Glasgow an FOI request found that in 2017 three fines (Fixed Penalty Notices) were issued; in 2016, one was issued; in 2015, zero fines; in 2014, two; and in 2013, three (most fines were for buses and taxis).⁷⁴

Roadside Vehicle Emission Testing

- Road Traffic (Vehicle Emissions) (Fixed Penalty) (Scotland) Regulations 2003

The regulations enable authorised persons from Local Authorities to carry out roadside enforcement checks of vehicles to ensure compliance with prescribed emissions limits as set down by Regulation 61 of the Road Vehicles (Construction and Use) Regulations 1986, as amended. The offence is an existing one but Local Authorities have, since 1 April 2003 been given the power to carry out enforcement of the offence. (The power to stop vehicles however remains with the police).

The Regulations include provisions which specify the format and amount of the Fixed Penalty Notices (£60). The emissions penalty may be waived if the owner of the vehicle rectifies the problem within 14 days of failing the test. The Regulations also include provisions which permit waiving of the FPN.⁷⁵

Local Authorities can determine if this power will form one of the means by which they seek to reduce emissions, and not all have chosen to do so. Less than half of all Local Authorities have sought to hold testing powers under the regulations (they are funded by the Scottish Government to test vehicles). They are as follows:

- Edinburgh City (not currently testing vehicles)
- East Lothian
- Falkirk
- Midlothian
- Renfrewshire
- South Lanarkshire
- West Lothian.⁷⁶
- East Dunbartonshire
- East Renfrewshire
- Glasgow City
- North Lanarkshire
- South Ayrshire
- West Dunbartonshire

Note: Glasgow City Council Glasgow has tested around 3,000 vehicles a year but Edinburgh City Council tests none, although it has the powers to do so (as at 2016).⁷⁷

3.2.2. Road Use

The following powers revolve around who may gain access to a road, when and for what purpose.

Traffic Regulation Orders

- Road Traffic Regulation Act 1984
- The Local Authorities' Traffic Orders (Procedure) (Scotland) Regulations 1999

A Traffic Regulation Order is a legal instrument used by road authorities to give effect to traffic management measures on roads within their areas, i.e. to make changes to which vehicles and who may gain access to a road, what they may do on that road and when. Under the Road Traffic Regulation Act 1984, Local Authorities can use TROs to apply local restrictions, enforceable when the appropriate road signs or markings are displayed. Restrictions can be applied for various reasons and could cover particular hotspots or larger areas. They can have effect at all times or during specific periods, and certain classes of traffic may be exempt from the TRO.⁷⁸ (The Environment Act 1995 added 'improving air quality' as a reason for making TROs under the Road Traffic Regulation Act 1984.)

Local Authorities may make TROs for the following reasons:

- to create a pedestrianised area;
- to introduce bus lanes – and thereby reallocate space and reduce journey times. The use of bus priority lanes appears to have been slow, maintenance ineffective, and the enforcement of lanes piecemeal and few have been installed in Scotland in recent years, possibly because of costs or because of road space conflicts. Transform Scotland have recommended simplification and reduction of costs, encouragement of Local Authorities to use TROs and improved enforcement;⁷⁹
- to introduce cycle lanes – and thereby reallocating space to cyclists; and
- to authorise high occupancy vehicle lanes – by creating an additional lane or by converting an existing lane. Lanes might in some circumstances be able to share bus lanes. There has been no use of HOV lanes to date in Scotland (at 2018), and little experience elsewhere in the UK.⁸⁰ (An internet search indicates that Birmingham,⁸¹ Bradford⁸² and Leeds City Council⁸³ have trialled HOVs).⁸⁴

TROs however can be viewed as process heavy, time consuming and 'fiddly' to apply, currently weighted in favour of the status quo, and overly prone to the impact of those who object to what the TRO intends to do (objections may form around the loading or unloading of vehicles⁸⁵). This might require a need for hearings, and the possibility that objections might lead to ministerial

intervention. This means that seeking to apply TROs can be a long, drawn out process, whose timescales may have to accommodate objections and hearings.

This raises questions therefore (Transport Scotland acknowledges that there are criticisms about TROs⁸⁶ and there may be changes afoot) around how far the process might act as a disincentive to their use. The combination of the nature of applying TROs (time consuming), alongside what might be the relatively small numbers of staff employed within local authorities to work specifically on active travel work, is likely to present various barriers around their use.

Moreover, as has been pointed out on several occasions during this work, local politicians are not necessarily keen to push through TRO after TRO for fear of political unpopularity and because the process is onerous. The use of Experimental TROs, in place for up to 18 months, may provide an opportunity to trial a TRO prior to any attempt to introduce a permanent TRO.

School Street Closures

- Road Traffic Regulation Act 1984

Local Authorities can use TROs / Experimental TROs to restrict parking around schools or to exclude vehicles at particular times.⁸⁷ Several Local Authorities (Edinburgh City, Glasgow City, East Lothian) have been or will be closing streets around a limited number of primary schools.

In Edinburgh, a programme of street closures is now permanent around a number of primary schools to reduce the number of children being dropped off / collected outside schools by car, to increase walking and cycling levels, and to disperse cars across a wider area. At the outset an Experimental TRO (18 months duration) was advertised and progressed for each school, to allow for the legal restriction of motor vehicles, with exemptions, including for local residents, on relevant streets. Signs were used to warn drivers at all entry points. Street closures may only be enforced by the police, not the Local Authority. An evaluation of the pilot scheme indicates that the impacts were variable from school to school but that in general vehicle speed and the number of vehicles was reduced, air quality improved and there were increased levels of walking to school.⁸⁸

In Glasgow, using an Experimental TRO, car free zones are to be trialled at 7 schools to improve road safety, with a range of criteria set for the selection of schools. The scheme will provide temporary pedestrian areas outside the schools for limited periods in the morning and afternoon, for up to 18 months. This is in response to concerns around poor driving, obstructive parking, congestion and emissions. To evaluate effectiveness, before and after counts will be taken of the number of parked / moving cars during school peak times

and to survey children walking / cycling to school, with success focused on a reduction in traffic congestion and speed at school gates, reduced car trips and increased walking and cycling.^{89 90}

Perth and Kinross: school exclusion zones have been trialled at 4 primary schools, for 18 months, using an Experimental TRO.^{91 92} The pilot, which appears to have not necessarily run entirely smoothly, including issues around enforcement, might become a permanent feature, and be expanded to other schools.⁹³

East Lothian: An Experimental TRO to ban traffic from streets around primary schools in Haddington was introduced for 18 months in 2014. A further TRO was re-introduced and the ban may now be permanent.^{94 95}

Potential **barriers** to the effective working of school street closures includes:

- flouting of street closure ban by parents;
- lack of police presence to enforce street closures;
- displacement of cars to local streets that are not closed;
- parental concerns about children travelling, walking and cycling, to school in heavily urbanised areas; and
- lack of consultation around, and advertising of, street closures.

Home Zones

- Transport (Scotland) Act 2001
- Home Zone (Scotland) (No 2) Regulations 2002

Section 74 of the Transport (Scotland) Act 2001 and the subsequent Home Zone (Scotland) (No 2) Regulations 2002 enable Local Authorities to designate roads as Home Zones, where they are the traffic authority. A Home Zone is a place where the whole of the space is available for a range of different uses. Vehicle speed must be low enough to satisfy the Local Authority that any permitted activities may be enjoyed safely by all.⁹⁶

‘The Planning Advice Note 65: Planning and Open Space’, suggests that Local Authorities consider their creation to give street space in residential areas back to pedestrians and prevent vehicles from dominating the environment, using sensitive design and high quality materials. Zones may link into the open space network, providing a safe link for pedestrians and cyclists between parks and recreational spaces and community facilities such as schools and shops.⁹⁷

Home Zones were evaluated for the Scottish Executive in 2007.⁹⁸ Several examples are provided in this evaluation of completed and non-progressed home zones. Current use is not clear (there is a 2010 example of a Home Zone in Craigmillar, Edinburgh⁹⁹) although reference to this approach is scattered through several current Local Authority plans / briefs.^{100 101 102}

3.2.3. Cycling

Cycling / Shared Use Cycle-ways

- Roads (Scotland) Act 1984
- Road Traffic Regulation Act 1984

The development of cycle paths appears to be relatively well progressed in the major cities particularly in Edinburgh followed by Glasgow (political leadership is generally deemed to be stronger in both cities around the active travel agenda than elsewhere in Scotland) with plans afoot for Dundee, with pockets of activity taking place across other local authorities.

Where cycling infrastructure is developing, this may be perceived however as insufficient and lacking sufficient connectedness. It may be deemed in some places inappropriate e.g. lack of true segregation of cyclists from traffic, use of shared use cycle-ways bringing cyclists into conflict with pedestrians and applying design methods / materials that could better reflect more recent improvements in design.³ Issues also emerge around: the inability to feed into infrastructure design (before Traffic Regulation Orders are issued, and not after); lack of enforcement of cycle lanes e.g. by targeting parking in cycle lanes; and a perception that cycle infrastructure is more likely to benefit more prosperous groups (who may be keener to engage with and demand cycling opportunities) with, for example, infrastructure deemed poorer in an area of one city where a significant proportion of the population are deprived.

In terms of spending, Edinburgh City Council is committed to spending 5% of its transport capital and revenue budgets on cycling infrastructure and projects, increasing by 1% each year. In contrast, in many other Local Authorities the estimated share is 1% or less of their own funds, with reliance on external funding.^{103 104}

Various traffic management measures may support cyclists, e.g. dedicated cycle-ways, one-way streets, contra-flow cycle lanes, road closures and shared cycleway and footpaths, as well as bike stands, bike stations and storage for bikes factored into housing (one respondent to this document pointed out that some housing associations for instance do not allow bike storage in communal areas, making bike ownership more problematic).

For most measures, a Traffic Regulation Order is required under the Road Traffic Regulation Act 1984 and is normally dealt with by the appropriate roads authority, e.g. the Local Authority. In some circumstances, the consent of

³ The Transport Scotland guidance document 'Cycling by Design' (2010) sets out desirable minimum design standards:
https://www.transport.gov.scot/media/14173/cycling_by_design_2010__rev_1__june_2011_.pdf

Scottish Ministers may be required. One or two objectors can delay or stop the implementation of a scheme even though their views may not reflect those of most residents and other road users, potentially acting as a deterrent for Local Authorities to introduce TROs.

Orders to close or convert an existing right of way by foot into a shared-use cycleway and footpath are made under the Roads (Scotland) Act 1984 and where there are sustained objections, the consent of the Scottish Ministers is required before the order can be confirmed.¹⁰⁵

Road maintenance: spending on roads in Local Authorities fell by 15% between 2010 to 2017, and of relevance to cyclists among other road users, is the impact of this on road maintenance. Around 30% to 39% of all A, B, C and unclassified roads in Scotland require maintenance, with only unclassified roads improving, with considerable variation across Local Authorities in the proportion of all roads requiring maintenance¹⁰⁶ (For example, Transform Scotland advocate for the use of national level funds for road building to address the estimated £2.25 billion maintenance backlog¹⁰⁷).

Concerns have also been raised for instance around completed road maintenance work and how those repairs have been carried out, i.e. repairs may be done in such a way as to be suitable for cars, but they may not be completed in a way that is suitable for cyclists in terms of continuing to pose a hazard for those road users.

3.2.4. Parking

No Footway Parking Zone / Pavement Parking

- Road Traffic Regulation Act 1984
- The Roads (Scotland) Act 1984

The Roads (Scotland) Act 1984 states that it is illegal to drive on footways. The position is less clear with regards to casual or occasional parking on footways. Local authorities have powers under the Road Traffic Regulation Act 1984 to restrict or prohibit footway parking (“no footway parking zones”) where footway parking is a problem on individual streets by using Traffic Regulation Orders, but this is deemed a costly process.¹⁰⁸ Living Streets suggest that Local Authorities tend not to do so, because of costs associated with consulting on TROs, timescales and the need for signage changes.¹⁰⁹

In terms of benefits, the Cycling Action Plan for Scotland (2010) indicated that allowing cycling on footways for children under 12 can have significant impacts on the number of children cycling to school (as in Exeter) and where footways are free of parked cars.¹¹⁰

Note: The Transport (Scotland) Bill proposes to make parking on the pavement illegal (subject to exemptions such as for loading and unloading – potentially legitimising pavement parking in areas of commercial activity¹¹¹) and to prohibit double parking - this would become a Local Authority duty.¹¹²

(Around 20 Local Authorities operate decriminalised, on-street parking enforcement (see below) under the provisions of the Road Traffic Act 1991. In Local Authority areas with decriminalised, on-street parking, stationary traffic offences cease to be part of the criminal law enforced by the police and become civil matters enforced by the Local Authority. Enforcement of other parking offences e.g. obstructive or dangerous parking and moving traffic violations remains a police responsibility (section 59 of the Roads (Scotland) Act 1984).¹¹³)

Parking (resident parking schemes)

- Road Traffic Regulation Act 1984

The Road Traffic Regulation Act 1984 permits Local Authorities to determine where motorists can park and how much it will cost. They may also restrict parking in other ways. Residents' parking schemes can be one way of encouraging non-residents to find other ways of travelling into town centres. Authorities can also use the planning process to regulate the amount of private non-residential parking associated with a new development.¹¹⁴ In Edinburgh the price of a parking permit has been linked to the CO2 emissions produced by the vehicle, with lower emitting cars paying less.¹¹⁵ A parking permit diesel surcharge is being considered.¹¹⁶

Decriminalised Parking Enforcement (DPE)

- Road Traffic Act 1991
- Scottish Statutory Instruments (SSIs) are required to introduce Decriminalised Parking Enforcement in a Local Authority area

DPE allows Local Authorities to administer their own parking penalties, following consultation with a range of stakeholders, and Penalty Charge Notices (PCNs) for vehicles, tailoring parking enforcement to meet specific needs and alignment with other policies. Stationary traffic offences cease to be criminal offences enforced by the police and become civil penalties enforced by the Local Authority, who retain the income from PCNs and from parking to finance and enforce the DPE (surpluses can be used to provide and maintain street parking facilities and secondly, for road improvement and public transport purposes).

Enforcement of other parking offences e.g. obstructive or dangerous parking and moving traffic violations remains the responsibility of the police, although some Local Authorities (Edinburgh, Glasgow, Highland) have sought further powers to tackle e.g. obstructive parking at or near schools. DPEs are required

to be financially sustainable if possible. Where not, Local Authorities can explore the scope for sharing services with other Local Authorities or for integrating parking attendant responsibilities into existing posts.

The Scottish Government's position is that DPE powers should contribute to a Local Authority's overall transport objectives and should be designed to manage the traffic network effectively, improve road safety and the local environment and encourage, where appropriate, increased use of more sustainable and healthy forms of travel.

Around 21 Local Authorities in Scotland (as at late 2018) apply DPE (Aberdeen City, Angus, Argyll and Bute, Dundee, East Ayrshire, East Dunbartonshire, East Lothian, East Renfrewshire, Edinburgh, Falkirk, Fife, Glasgow, Highland, Inverclyde, Midlothian, North Lanarkshire, Perth and Kinross, Renfrewshire, South Ayrshire, South Lanarkshire, Stirling). North Ayrshire is working towards DPE, the remaining Local Authorities either view DPE as unnecessary or too expensive (Aberdeenshire, Clackmannanshire, Dumfries and Galloway, Moray, Orkney Islands, Shetland Islands, Western Isles, West Lothian, West Dunbartonshire, Scottish Borders). (In terms of number of PCNs issued, 2017/18 statistics indicate that Edinburgh⁴ imposed more PCNs than any other Local Authority.)^{117 118 119}

Workplace Parking Levies

- Proposed in the Transport (Scotland) Bill

The power for Local Authorities to apply workplace parking levies is yet to be worked out. Recent amendments to the Transport (Scotland) Bill mean that Local Authorities may be able to introduce a levy, if the Bill is passed, if they think it is appropriate (it will not be compulsory). If agreed, this would bring the law in Scotland into line with that in England and Wales (See Box 4 below for information about the Nottingham parking levy).

It is proposed that the levy would be collected by way of a licensing scheme. Employers with on-site parking would be required to apply to their Local Authority for a licence for each car park, and would pay the levy. Employers could then choose to pay the levy or charge staff for all or part of it. The licence cost would be based on the maximum number of vehicles that each workplace car park can hold, with a set charge for each parking space, with smaller workplace car parks exempt. Not all employers would be required to pay (e.g. NHS, GP surgeries, hospices and disabled parking spots). Funds raised would be expected to be spent on activity set out in Local Authority Transport Strategies. (Edinburgh would have c39,000 workplace parking places liable for

⁴ 191,563 PCNs (Edinburgh City), 125,505 (Glasgow City), Dundee City (21,837), Aberdeen City (40,392). For other Local Authorities see: <https://www.transport.gov.scot/media/43636/decriminalised-parking-enforcement-income-expenditure-annual-report-2017-18.pdf>

the levy.)^{120 121} The levy is supported by MSPs but the Transport (Scotland) Bill must be passed for the levy to take effect.¹²²

Box 4:

Nottingham: All English Local Authorities have the power to introduce workplace parking levies (international examples include Perth, Sydney, Melbourne and Vancouver¹²³). Thus far, only Nottingham City Council has applied a parking levy. It charges employers, who can choose to reclaim part or all of the cost from their employees. The charge is £415 per year, with approximately 25,000 workplace parking spaces affected. The levy raises £9m a year, used to fund improvement to public transport in the city and costs around £0.5m a year to run. Public transport use is now among the highest of any UK city, with a reported link between the levy and reduced traffic congestion. There is little evidence that it has had a negative effect on the city's business stock or on inward investment.^{124 125 126 127}

3.2.5. Speed, Traffic Calming and Footways

Speed (20mph)

- Road Traffic Regulation Act 1984 (Amendment) Order 1999 (S.I. 1999/1608)
- Restricted Roads (20mph Speed Limit) (Scotland) Bill (voted down)

Local Authorities have the power to introduce 20mph zones or speed limits where it is deemed appropriate. The power therefore is unevenly applied across Scotland; the process of applying these powers was described by one Local Authority contributor to this work as time consuming and laborious.

Speed limits are regulated under the provisions of Part VI of the Road Traffic Regulation Act 1984. Section 81(1) of the 1984 Act sets a general speed limit applicable to most roads in built-up areas to not exceed 30 miles per hour.¹²⁸ Since July 1999, the Road Traffic Regulation Act 1984 (Amendment) Order 1999 (S.I. 1999/1608) has given Traffic Authorities the power to introduce 20mph speed limits and zones without obtaining the consent of Scottish Ministers.¹²⁹ Local Authorities may apply 20mph zones or limits and part-time 20mph limits. Transport Scotland's *Good Practice Guide* on 20mph Speed Restrictions (June 2016, V.2) sets out various approaches.¹³⁰

Local Authorities are advised to use the powers to set permanent or part-time 20mph limits around schools where they are able to do so, to divert unnecessary traffic away from school routes in the morning and afternoon, and to use traffic calming measures to reduce average speeds.¹³¹

A recent UK evaluation of 20mph schemes has indicated that where introduced these tend to be supported by communities and report very modest reductions in mean speeds, possibly greater for faster drivers, and signs of small but significant increases in the use of active travel modes. Evidence of any significant change in collisions and casualties is harder to identify.¹³²

The Scottish Parliament provides a further evidence summary¹³³ and the Rural Economy and Connectivity Committee generated evidence¹³⁴ supported the widening of the implementation of 20mph zones but not the 'one size fits all' approach of the recently voted down Restricted Roads (20mph Speed Limit) (Scotland) Bill. The Bill sought to reduce the speed limit on restricted roads to 20mph (from 30mph), generally in residential streets and minor roads in urban areas, thereby making 20mph the norm in built-up areas while allowing a limited network of through-routes in towns and cities which are subject to speed limits higher than 20mph.^{135 136}

Roads (Humps, traffic calming, footways, paving etc.)

- Roads (Scotland) Act 1984

The Roads (Scotland) Act 1984 requires that Local Authorities, as roads authorities, are responsible for managing and maintaining the public roads within their area.

Of relevance to active travel, pedestrians and cyclists, Local Authorities have the power to:

- construct road humps (for roads with a speed limit of 30mph or less);
- construct traffic calming works;
- provide proper/sufficient footways where necessary and desirable;
- construct, light, and maintain subways/footbridges for pedestrians; and
- provide raised paving, pillars, walls, rails, fences or barriers (e.g. at footways, footpaths, cycle tracks) to safeguard persons using a public road.¹³⁷

Traffic Calming / Urban Gateways

- Roads (Traffic Calming) (Scotland) Regulations 1994
- Road Humps (Scotland) Regulations 1998

The Roads (Traffic Calming) (Scotland) Regulations 1994 and the Road Humps (Scotland) Regulations 1998 allow Local Authorities to introduce a wide range of physical measures to slow traffic. Local Authorities may also use the Roads (Traffic Calming) (Scotland) Regulations 1994 to create narrow gateways to urban centres. This technique may discourage car access to particular areas, as long as there are suitable alternative routes for through traffic.¹³⁸

The use of humps while potentially useful in terms of reducing speed, is deemed problematic by some cyclists, with other measures to reduce speed preferred.

3.2.6. Housing, Active Travel and Public Transport

There appear to be no specific Local Authority powers that relate directly to the provision of public transport or active travel options alongside new housing developments. However Section 75 agreements (Town & Country Planning (Scotland) Act 1997) allows Local Authorities, prior to planning permission being granted to the land owner, such as house builders or other forms of development, to include a Section 75 agreement,¹³⁹ an obligation on the land owner to provide a financial contribution to e.g. transport, roads, schools or the public domain. How this plays out, in terms of the use of section 75 agreements to support non-car related travel is not clear.

Scottish Planning Policy indicates that new housing developments should be integrated with public transport and access to active travel networks, such as footpaths and cycle routes, rather than encouraging dependence on the car.¹⁴⁰ How well this is working is unclear (a growing evidence base is available for England^{141 142}). However work by Living Streets suggests that housing developments in Scotland are not necessarily creating low car use environments. They suggest that the existing guidance be changed to strengthen policy so that all new housing developments ‘must’ rather than ‘should’ support active travel and the use of car clubs.¹⁴³

3.2.7. Street Design

A complex set of legislation, policies and guidance applies to street design. Local Authorities are expected to have developed their own street design guidance, to correspond with Scottish Government policy (‘Designing Streets’ (2010) which sets out national planning, architecture and transport policies as they relate to street design¹⁴⁴). The guidance states, for example, that Local Authorities seek to achieve the following:

- street user hierarchy should consider pedestrians first, private motor vehicles last;
- streets should be designed to be inclusive, for all ages and abilities;
- design should provide good connectivity for all modes of movement and for all groups of street users;
- design should influence driver behaviour to reduce vehicle speed;
- signs and street markings should be kept to a minimum; and
- street furniture should have a clear function, be located for maximum benefit and reduce pedestrian obstruction.¹⁴⁵

3.3. Public Transport: Bus Provision

- The Transport Act 1985
- Transport (Scotland) Act 2001

Background

The Transport Act 1985 split publicly owned companies into geographical areas which were then sold to private operators, with the exception of Lothian buses. Bus services are provided by the private sector, excluding Lothian Buses (owned primarily by Edinburgh City Council, but operated commercially at arms-length). (Bus operators compete directly for local tendered services, although not all contracts receive bids from more than one operator¹⁴⁶).

Local Authorities may only provide a subsidy for the operation of services that are socially necessary and that cannot be provided on a commercial basis. Approximately 80% of Scottish local bus services are operated commercially.

Nationally, Transport Scotland sets policy, provides the concessionary fares scheme and the Bus Service Operators Grant, to subsidise commercial and community bus routes comprised of a core payment and an incentive for the operation of green, environmentally friendly buses.¹⁴⁷ The Traffic Commissioner is responsible for Public Service Vehicle operator licensing and regulation. At regional level, 7 Regional Transport Partnerships (created by the Transport (Scotland) Act 2005) comprised of Local Authority councillors, with voting rights and external members appointed by Scottish Ministers, who may only vote in certain circumstances draft regional transport strategy. Locally, Local Authorities provide bus infrastructure, stations, shelters, bus lanes, passenger information and subsidies for socially necessary services.^{148 149 150}

The Scottish bus industry, comprised of 200 operators of varying size, has been contracting with fewer staff and buses. Operator revenue, in 2017/18 was £684m, 56% from passenger revenue, and the remaining 44% (£299m) from local and central government concessionary travel support (£195m), the Bus Service Operators Grant (£51m) and Local Authority payments to bus operators for supported services (£53m).¹⁵¹

Bus use has fallen significantly since the 1960s, before plateauing and then beginning to fall again more recently, primarily in the south west, Strathclyde, North East, Tayside and Central. Bus route loss is around one-fifth,¹⁵² with community take-over filling some gaps.¹⁵³ In terms of users, the Scottish Household Survey indicates that women are more likely to use buses, as are younger groups (16-19), those aged 60+ and those in urban areas. Use is lowest for those aged 30-59. 36% of all journeys (2016/17) were concessionary travel journeys.¹⁵⁴

Head to head bus company competition is rare but where it does exist it is deemed to provide benefits for customers. Bus fares are set by the operator and have risen by almost 19% over the past five years (at 2017), lower than in the rest of the UK, but higher than for all other forms of land transport. Locally, attention has been focussed on very significant bus fare increases, particularly in Glasgow and the West of Scotland, the implication this has for those on lower incomes,⁵ as well as potentially exclusionary modes of ticketing (e.g. using smartphones).^{155 156}

As the Glasgow Connectivity Commission Report points out, bus use in Glasgow has fallen fastest than in any other UK city in the last decade, while use of its rail network has increased significantly. The report makes broader points about the heavy focus on major road projects in a city with one of the lowest levels of car ownership in the UK, and for those without a car the inequity imposed by reliance on bus services that are characterised by poor information provision, route loss, an old fleet, reduced service frequency, a private / public partnership overseeing bus provision that has 'foundered' and prohibitive ticket prices. In terms of gaining access to the labour market the report states that a quarter of those living on the periphery of the city have to use several buses to get to work. An example cited in the report of a public / private bus partnership deemed to be working is the four year deal between Leeds City Council and bus operators including First West Yorkshire, with funding of £173m for infrastructure improvements and £71m funding for new buses.^{157 158}

Powers

The Transport (Scotland) Act 2001 gave Local Authorities powers to work with operators in improving bus services, including by establishing Statutory Quality Partnerships (sQPs) and Quality Contracts (QCs).

A Bus Quality Partnership Agreement requires that transport authorities and bus operators commit to improvements within a specific geographical area aimed at increasing quality by e.g. securing better quality bus services, such as around usage, air quality, service quality, vehicle improvement and improved customer service. Guidance has stated that setting up a quality partnership may require significant investment by both the authority and the operator in terms of financial and human resources. There has been limited use of these, but some voluntary arrangements (vQP) to try to attain benefits of the partnership approach without having to agree a legal process or make formal commitments.

⁵ As the Poverty Alliance point out, as well as cost, low income groups tend to live in areas under-served by bus services and this applies in both rural and urban areas in the form of routes that do not link to services and opportunities for social connections that residents require. Moreover, concessionary travel is not available for many of those on low income (and awareness of the reduced cost rail travel schemes such as Jobcentre Plus Discount Card may be patchy). The changing nature of the labour market, particularly lower paid work, requires flexible working, and public transport that responds to this. This is frequently absent. See <http://transformscotland.org.uk/wp/wp-content/uploads/2018/11/Rethinking-Transport-Services-to-Tackle-Poverty-Poverty-Alliance-briefing-for-Transform-Scotland-2018-10-16.pdf>

Ambitious targets have been set (e.g. around usage, punctuality etc. but targets are rarely delivered).¹⁵⁹

A Bus Quality Contract is a formal arrangement between a Local Authority and local bus service operators and involves one or more Local Authorities specifying what local bus services should be provided in the area, the standards that should be provided (e.g. frequencies, fares) and other services (e.g. bus shelters). Quality Contracts are a form of franchising (i.e. providing exclusive rights to operate bus services through competition by tender). To date, no Quality Contract schemes have been implemented, with evidence that the Quality Contract system is too burdensome to attempt.^{160 161}

Note: If passed, the Transport (Scotland) Bill would replace the partnerships with Bus Service Improvement Partnerships and contracts with local bus service franchises, amending the Transport Act 1985 to allow a Local Authority or a company formed by a Local Authority or model 3 Regional Transport Partnership (which have a wider range of powers than when set up; there are several in Scotland) to provide local bus services, where services are meeting unmet need and, if commercially operated services are operating without subsidy, a council run service cannot compete with them.¹⁶²

Those critical of some of the proposals, such as Transform Scotland, argue that the focus on bus ownership is misplaced and that the Bill should also seek to address the reasons they suggest are responsible for declining bus use centred on congestion, reliability, cost, the impact of parking, out of town shopping, the relatively low cost of car use and declining revenues from government against a background of rising costs. They suggest that how far Local Authorities may be able, or want to offer bus services given the significant period of time since bus deregulation (1986), loss of transport management experience, staffing and budget cuts, is questionable, and they recommend the adoption of a mechanism to monitor service standards such as around network coverage, fares, frequency and environmental standards etc.^{163 164}

3.4. Open Space, Greenspace and Land Access

Open Space and the Planning System

Planning Advice Note 65 defines 'open space' as greenspace consisting of any vegetated land, water, path or geological feature in or near settlements, and civic space consisting of squares, market places and other paved land etc. This includes parks, gardens, amenity greenspace, play-space, sports areas, green corridors, natural greenspace, allotments and community growing spaces, civic space, burial grounds etc. Open spaces may be self-standing or part of 'green networks' (a green network¹⁶⁵ focuses on delivering social and economic benefits as well as environmental improvements¹⁶⁶) and planning advice indicates that authorities should try to form, extend and enhance green networks.

Local Authorities are asked to consider open space in development plans. Strategic Development Plans, produced by the four city-regions (Aberdeen, Dundee, Edinburgh, Glasgow), focus on issues such as land for housing, business, retail and infrastructure provision and set the framework for regional green infrastructure planning and delivery.

Local Development Plans, produced by all Local Authorities, set out the local vision, priorities and policies for development – including around the protection and enhancement of open space and the circumstances in which new green or civic spaces will be required as part of new developments. Local Authorities are encouraged to take a strategic, long-term approach to planning and managing open space through the development of open space audits and strategies that take account of the quantity, quality, value and accessibility of the open space resource.

Value and quality: what might constitute value and quality etc. is set out in Scottish Natural Heritage developed guidance. High quality open space is deemed not always easy to define, but consistency and transparency is deemed critical. Key criteria should include accessibility and connectivity, safety and security, maintenance standards and community benefits and might also include contributions to health and well-being, biodiversity and the local economy etc. Local Authorities determine the mix of measures to be applied to the assessment of open space, with a role for stakeholders and communities.

Audits and open space strategies / Local Development Plans: Scottish Planning Policy states that Local Authorities should undertake an audit of the open space resource in their area and how well it meets the needs of the community, and use the information from the audit to prepare an Open Space Strategy to set out the vision for new and improved open space and to address any deficiencies identified (this is not a statutory duty and Local Authorities are not obliged to state their plans and what they intend to achieve).

Maintenance: planning advice states that Local Authorities have an important role in ensuring that the existing spaces in their area are maintained to a good standard and enhanced where possible and that they identify any scope for community and voluntary sector engagement in this. The planning system is deemed to have limited control over open space maintenance although it can make provision for this through planning conditions or agreements on planning consents ensuring the provision of new or improved open space as part of development proposals e.g. for housing developments long-term arrangements should be agreed before consent is issued.^{167 168 169 170}

Parks

Under the Local Government and Planning Act (Scotland) 1982 (Section 14):

- Subject to subsection (2) below and to section 19 of this Act, a local authority shall ensure that there is adequate provision of facilities for the inhabitants of their area for recreational, sporting, cultural and social activities.¹⁷¹

There is no specific reference to public parks within section 14 of the Act but 'park' is defined in section 19 of the Act. Therefore it might be possible to state that Local Authorities have a duty to provide facilities for the inhabitants of their area for recreational, sporting, cultural and social activities and many local authorities meet that duty by ensuring that there are public parks in their area ('adequate' remains undefined).

There appears to be no specific statutory duty to maintain parks and greenspace. Based on information provided for this document, Local Authorities in Scotland do not necessarily consider that they have a statutory duty to maintain parks, irrespective of the Act. (In England, as funding has fallen and new sources of funds are required, there have been calls for public park provision to be made a statutory duty,¹⁷² and likewise support in Scotland for parks and greenspace to become a statutory service¹⁷³).

As Greenspace Scotland point out provision of parks and greenspace is an example of 'preventative spend' e.g. an Edinburgh City Council study using a social return on investment approach has identified that for every £1 invested in the city's parks and greenspaces, £12 is delivered in return in social and environmental benefits. However whilst most Local Authorities in Scotland have open space strategies in place, as austerity impacts on spending, expenditure on parks and greenspace services has continued to fall (95% of authorities reported reduced budgets in the last 3 years) as have staffing levels, but the picture is likely to be variable.

In terms of park and greenspace quality, the lack of a single method for assessing quality means that several methodologies have been employed by Local Authorities (use of one tool therefore might generate consistency in

approach). Public perceptions, as captured by a Greenspace Scotland, indicate that the quality of local greenspaces may be falling, use may be falling and in terms of deprivation, the likelihood of living further away from greenspace is greater for those living in areas of deprivation, with less use of and lower levels of satisfaction reported.^{174 175} Wider questions to be considered might also include those around how well parks and greenspaces are faring in deprived areas versus those in less deprived areas, and is funding more likely to head towards major well-kept parks versus those that might be less well used?

It is anticipated that in the UK, as park staff and skills are lost and volunteering increases, how parks are managed and by who, is likely to undergo some degree of change. External sources of income, the use of which appears to be on the rise, will likely become a means whereby parks are funded.¹⁷⁶ In Scotland there has not necessarily been any transfer of parks from Local Authority control to the friends / community groups attached to many public parks, or the appetite from those groups to manage parks. The perception is however that such groups are not necessarily getting the support and advice that they have received in the past from Local Authorities.

Some Local Authorities in Scotland are generally perceived as being better at generating revenue from their parks or in seeking funding from other sources (this requires sufficient staff to bid for funds and to achieve aims when successful in bidding), or in viewing parks and greenspace as an asset, as a means of addressing climate change¹⁷⁷ or improving health and well-being.¹⁷⁸

Emerging examples of innovation in parks might include seeking to generate power in parks from renewable sources to then feed that into social housing or public buildings such as Greenspace Scotland's 'ParkPower' initiative. The first ParkPower initiative is at Saughton Park in Edinburgh, where a combination of private, public and charitable funds will be used to support the generation of power from hydro and ground source heat pumps for park facilities.^{179 180} Other sources of revenue might emerge from park use as outdoor kindergartens (as childcare is extended in Scotland¹⁸¹) and the Future Parks Accelerator (Heritage Lottery Fund and National Trust), a UK wide initiative to enable 8 Local Authorities or communities to innovate in terms of funding and management of green spaces (Edinburgh is a recipient).¹⁸² How parks are used and why, via the application of technology, is currently the focus of the ParkLife project run by Edinburgh University and Edinburgh City Council¹⁸³ and its findings might be central in shaping future use.

The following are a range of Local Authority powers that link to greenspace and land access.

Local Nature Reserves

- National Parks and Access to the Countryside Act 1949 (Section 21)

Local Nature Reserves (LNRs) are protected areas of land designated by a Local Authority because of their special natural interest or educational value e.g. a Site of Special Scientific Interest and/or a Natura site (an area of conservation / protection under the EU Habitats and Birds Directives). The Act gives Local Authorities the power to select, acquire, manage and protect LNRs ('LNR' is not used in the Act, this title has become attributed by custom to nature reserves managed by Local Authorities exercising their functions under the Act.) Scottish Natural Heritage must be consulted by a Local Authority when carrying out these functions.¹⁸⁴

The most recent LNR was established in Orkney in 2017. An area to be designated an LNR must be at least of local importance in terms of its natural heritage, wholly within the Local Authority area and owned or leased by the Local Authority. There are 75 LNRs, usually managed via a countryside ranger service. LNRs may also have a local management committee comprised of community members etc. Local Authorities can make byelaws to regulate inappropriate behaviour within LNRs.¹⁸⁵

Country Parks

- Countryside (Scotland) Act 1967 (Section 48)

Local Authorities may designate and manage country parks. They provide and manage almost all of Scotland's 40 country parks.¹⁸⁶ Most are now several decades old, and while they remain locally important, the view is that they have to some extent been subsumed into the wider spectrum of greenspace that Local Authorities provide and manage.

Regional Parks

- Section 48A of the Countryside (Scotland) Act 1967, as amended by Section 8 of the Countryside (Scotland) Act 1981

Local Authorities have the power to designate regional parks within their area, with support from Scottish Natural Heritage, and with Scottish Ministerial agreement. There are currently 3 regional parks - Clyde Muirshiel, the Pentlands and the Lomond Hills.¹⁸⁷ These are extensive peri-urban areas integrating recreation with other land management activities deemed to be comparatively resource-intensive, with a relatively low profile, and all 3 are thought to be under considerable pressure with reductions in funding and dedicated staff.

Planning: Tree Preservation Orders

- The Town and Country Planning (Scotland) Act 1997 as amended by the 2006 Act The Planning etc. (Scotland) Act 2006
- Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas) (Scotland) Regulations 2010 (SSI 2010/434)

Local Authorities have a duty to ensure, whenever appropriate, that in granting permission for any development, adequate provision is made, by the imposition of conditions, for the preservation or planting of trees. Local Authorities have the power to make a Tree Preservation Order (TPO) if it appears to them to be: expedient in the interest of amenity and/or that the trees, groups of trees or woodlands are of cultural or historical significance. A TPO may make provision for prohibiting the cutting down, topping, lopping, uprooting, wilful damage or destruction of trees and may also secure replanting etc.^{188 189}

Planning policy states that Local Authorities should seek opportunities to create new woodland in association with development and mitigate the severing or impairment of connectivity between important woodland habitats. Where woodland is removed, developers are generally expected to provide compensatory planting and this should be taken into account when preparing Local Development Plans and determining planning applications.¹⁹⁰

Local Landscape Areas

There are no specific Local Authority powers around Local Landscape Areas (formerly Special Landscape Area and Area of Great Landscape Value). Local Authorities have the power to establish and manage these areas, as part of Local Development Plan activity, based on a range of criteria (scenic, cultural, nature, recreation, rarity etc.) drawing on advice e.g. from Scottish Natural Heritage. Local Landscape Areas are deemed to:

- promote a community's sense of pride in its surroundings;
- help to protect a landscape from inappropriate development;
- encourage positive landscape management; and
- play an important role in developing an awareness of the landscape.¹⁹¹

Local Nature Conservation Sites

LNCS are a non-statutory designation given by Local Authorities to areas of locally important nature and landscapes (various alternative names may be used). LNCS identify locally important natural heritage that could be damaged by development. Types of LNCSs include: listed wildlife site; site of importance for nature conservation; and local geodiversity site (of interest for scientific study and education, historical significance and cultural and aesthetic value etc.).^{192 193 194}

Conservation Areas

- Scottish Planning Policy / Historic Environment Scotland: Policy Statement June 2016 / Historic Environment Circular 1 / Historic Environment Scotland: Managing Change in the Historic Environment

These are areas of special architectural or historic interest. Local Authorities are required to determine which parts of its area are of special architectural or historic interest. This does not place a ban upon all new development within its boundaries but this will only be granted planning permission if it can be demonstrated that it will not harm the character or appearance of the area.^{195 196}

¹⁹⁷

Access to Land

- Land Reform (Scotland) Act 2003

Under Part 1 of the Act, Local Authorities have a number of responsibilities. Duties extend to ensuring that they have drawn up a plan for a system of paths (core paths) sufficient for the purpose of giving the public reasonable access throughout their area and in setting up a local access forum to provide advice to the Local Authority. They have the power to maintain and keep core paths free of obstruction and encroachment etc. and provide directions to core paths. Powers allow Local Authorities to serve written notice on land owners who prevent or deter access to land, delineate paths via path orders, acquire land to enable or facilitate exercise of access rights, the power to install and maintain gates and lavatories etc. that contribute to the comfort and convenience of persons exercising their rights to the land. Any person authorised by the Local Authority may gain access to land in connection with exercising functions under the Act.¹⁹⁸

Part 1 of the Act formalised Scotland's traditional 'right to roam' into a statutory framework of public access rights, based on the principle of responsible access, with obligations on both the access users and the owners of land over which there is public access. Guidance on these responsibilities is set out in the Scottish Outdoor Access Code developed by Scottish Natural Heritage and approved by Scottish Ministers. The Act has been perceived as working well (as at 2014), although there have been tensions (and a need for better guidance for Local Authorities) and these include around access issues that may not be resolved by local access forums and instead might involve taking an issue to the Sheriff Court, deemed a potentially difficult and expensive option.¹⁹⁹

This raises questions therefore around how well Local Authorities might be able to use their powers if the consequence of this is potentially expensive, time

consuming legal action.⁶ The current picture is that dwindling Local Authority budgets have impacted on this activity and while some Local Authorities maintain active land access teams, others no longer do so. A similar picture applies to the provision of Local Authority countryside ranger services.⁷⁸

Rights of Way

- Countryside (Scotland) Act 1967 (Section 46)

Local Authorities can assert, protect and keep open and free from obstruction or encroachment any public right of way which is wholly or partly within their area, and they may take legal proceedings. They have the power to repair and maintain any public right of way within their area, but this power shall not relieve any other authority or person from any liability with respect to such repair or maintenance.²⁰⁰

⁶ See Scotways (Scottish Rights of Way and Access Society) for information about current court cases relating to outdoor access <https://www.scotways.com/court-cases> and the following document for court cases up to around 2010:

https://www.scotways.com/scotways_assets/files/045_ScotWays%20Case%20Law%20Publication%2014-09-2010.pdf

⁷ Monitoring of the implementation of the Act was last carried out in 2016. See: <https://www.gov.scot/publications/land-access-monitoring-implementation-of-part-1-of-the-land-reform-act/>

⁸ For further information about access to land see Scottish Natural Heritage: <https://www.outdooraccess-scotland.scot/sites/default/files/2018-10/A%20Brief%20Guide%20to%20Laws%20relevant%20to%20Outdoor%20Access%20in%20Scotland.pdf>

3.5. Environment: Litter, Fly Tipping, Dog Fouling and Noise

Background

Local Authorities, among a range of other stakeholders, are encouraged to develop Litter Prevention Action Plans to then feed into wider Community Litter Prevention Action Plans to cover each Local Authority area.²⁰¹ (Note: Towards a Litter-free Scotland (2014) is the national strategy that sets out how litter and fly-tipping may be addressed, with Local Authorities identified, among a range of partners as being responsible for strategy delivery).²⁰²

The nature of Scotland's litter and fly-tipping problem has been described as one that had improved (e.g. in relation to the use of Fixed Penalty Notices by Local Authorities to address litter and fly-tipping, falling levels of litter, dog fouling and vandalism and graffiti). However Keep Scotland Beautiful have indicated in work published in 2016/17, and based on a range of evidence and data sources, that positive improvements in environmental quality (e.g. litter, dog fouling, weed growth and fly-tipping) have to some extent been reversed, with a widening gap identified in environmental quality between deprived and more prosperous areas with Local Authority budgets cited as one cause of this.^{203 204}

In terms of fly-tipping there c.60,000+ incidents in Scotland each year, but the trend is not clear, with substantial costs, in the millions, for Local Authorities. Various factors will impact on the likelihood of fly-tipping including: low number of household waste recycling centres in a Local Authority; long distance to a recycling centre; lack of transport options to reach the centre (e.g. you need a car); inconvenient opening hours of centres; limited free access to centres; perceived adequacy of kerbside collection services and costs; and availability and promptness of Local Authority uplift of bulky waste services.²⁰⁵ The extent to which Local Authority recycling centres are open in the evening or have reduced opening hours, or have been closed, is unclear (although there is some evidence of this).

In terms of costs for bulky waste uplifts, there has been significant variation in the level of charges across Local Authorities.²⁰⁶ If all Local Authorities now charge for uplift is not clear, although clearly charges will act as a disincentive for some potential users of this service.

Powers

Local Authorities have powers to address litter and fly-tipping but the extent to which several of these powers are used is unclear and barriers to use are likely to include the cost of employing wardens to issue Fixed Penalty Notices (FPN) for littering, the challenge of catching individuals 'in the act' of dropping litter, and what might be the relatively limited income to be generated by issuing FPNs. Those in receipt of FPNs may be able to evade payment, with greater likelihood of being taken to court in some Local Authorities versus others, as well as the slow and expensive process of using the justice system to enforce the payment of fines, or to prosecute fly-tippers (see below).

Some attention has focused on the low, and falling, numbers of prosecutions for fly-tipping in Scotland. There is no information however on how many investigations Local Authorities have undertaken, costs and manpower used, or how many of those investigations have been referred to the Crown Office and Procurator Fiscal Service, and why prosecutions do not take place. Given the very low levels of prosecutions, in relation to the estimated number of fly-tipping incidents, it might be possible to state that the current system is not particularly effective at least in terms of the number of prosecutions.

The following Local Authority powers apply to litter, household waste, fly-tipping, dog fouling and noise.

Littering

- The Environmental Protection Act 1990 (Section 87, 88)
- The Litter (Fixed Penalty Notices) (Scotland) Order 2014

Local Authorities have a duty to ensure that roads and land under their control and to which the public have access are kept free of litter and refuse. They have the power to issue a Fixed Penalty Notice for littering. The Litter (Fixed Penalty Notices) (Scotland) Order 2014 is a statutory instrument that allows Local Authorities to issue a FPN of £80 for littering. A recent FOI enquiry indicates that falling numbers of community wardens across Local Authorities in Scotland are impacting on the number of fines issued for littering and dog fouling (see below) with fines collected falling from £0.97m from £1.6m in three years from 2015/16. In Glasgow which has been the major generator of fines in Scotland, 46% of fines were not paid, and no unpaid fines were referred to the Crown Office and Procurator Fiscal Service, in the 3 years up to March 2018. The city lost a third of all wardens from 2015/16 to 2018 with FPNs halving to 9,954.²⁰⁷

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Litter Control Area

- The Environmental Protection Act 1990 (Section 90)

Local Authorities can designate certain types of littered land to which the public have access, but is usually privately owned, as Litter Control Areas if they consider that the presence of litter or refuse on that land is detrimental to the amenities of the area. This places a duty on each occupier of that land to ensure it is kept clear of litter and refuse, so far as is practicable. Land includes car, retail and business parks, industrial estates, cinemas, bingo halls, beaches, marinas, camping sites, amusement arcades, sports facilities, motorway service stations and picnic areas.

Street Litter Control Notices

- The Environmental Protection Act 1990 (Section 93)

A principal litter authority may, to prevent the accumulations of litter or refuse in and around any street (e.g. 10 metres from an automated teller machine, up to 100 metres from a betting office, shops or fast food premises) or open land adjacent to any street, issue street litter control notices imposing requirements on occupiers of premises in relation to litter or refuse. Notices can include clearing litter (excluding on roads) and providing or emptying litter bins. If the litter authority believes that a person is failing to comply with any requirement imposed by a notice they could be fined up to £2,500.

Litter Abatement Notice

- The Environmental Protection Act 1990 (Section 92)

Local Authorities have the power to serve a litter abatement notice if they are satisfied that the relevant land of a duty body (e.g. local authorities and statutory undertakers such as Network Rail, and also schools, colleges and universities) is defaced by litter or refuse or that defacement by litter or refuse is likely to recur. The notice is served on the occupier of the land or, if there is no occupier, on the owner. If a person on whom a notice is served fails to comply with the notice, they will be guilty of an offence and liable on summary conviction to a fine (£2,500 as at 2006).

Waste Collection

- The Environmental Protection Act 1990 (Section 59)

If controlled waste is unlawfully deposited on land in the area of a waste regulation authority or waste collection authority (including a Local Authority), the authority may serve a notice which requires the occupier to remove the waste within a specific period not less than 21 days and / or take, within such a period, specific steps to eliminate or reduce the consequences of the waste. If a person on whom a requirement has been imposed fails, without reasonable excuse, to comply with the requirement they may be liable to a fine of up to £5000 etc.

Receptacles: Household waste

- The Environmental Protection Act 1990 (Section 46)

Where a waste collection authority (including a Local Authority) has a duty to arrange for the collection of household waste, the authority may require the (household) occupier to place the waste for collection in a specified receptacle. Occupiers have a 21 day right of appeal against any requirements imposed on them. A person who fails, without reasonable excuse, to comply with any requirements imposed by this section may be liable to a fine of up to £1,000.

Receptacles: Commercial waste

- The Environmental Protection Act 1990 (Section 47)

A waste collection authority may supply receptacles for commercial or industrial waste which the person has requested the authority to collect and may make a reasonable charge for receptacles supplied. If the authority believes that any commercial or industrial waste which, if not stored in an appropriate receptacle, could cause a nuisance or be detrimental to the amenities of the locality, the authority may require the premises occupier where the waste is stored to provide an appropriate receptacle(s) for waste storage. The authority may make provisions with respect to size, construction and maintenance of receptacles, the placing of receptacles and what may be placed into the receptacles. A person who fails, without reasonable excuse, to comply with any requirements imposed under this section may be liable to a fine of up to £1000.

Abandoned shopping and luggage trolleys

- Environmental Protection Act 1990 (Section 99)

Section 99 and Schedule 4 of the Act provide Local Authorities with a method of dealing with abandoned trolleys in their area.

(See also: Citizens and Litter: Environmental Protection Act 1990 (Section 91) - gives citizens aggrieved by the defacement by litter or refuse of relevant land the power to make a summary application to the Sheriff.)

Also of relevance:

- Section 6 of the Refuse Disposal (Amenity) Act 1978 gives Local Authorities the power to remove from land open to the air any 'thing' other than a motor vehicle which has been abandoned without lawful authority. If the land is occupied, the council must give notice of their intention to remove. Costs can be recovered from the person leaving the refuse or a person knowingly permitting it
- Section 179 of the Town and Country Planning (Scotland) Act 1997 enables a Local Authority to require the owner and occupier of land to take specific steps to remedy the condition of the land, if they consider that the land's condition adversely affects the amenities of the area
- Section 92 of the Civic Government (Scotland) Act 1982 creates an offence of leaving litter in areas such as common back courts and passageways. A Local Authority may make byelaws for the regulation of their cleaning by the occupier and these may provide that persons contravening such provisions shall be liable, on summary conviction, to a fine
- Section 4 of the Prevention of Damage by Pests Act 1949 gives Local Authorities the power to serve a notice on the owner and / or occupier of

any land to remove accumulations of waste where damage by pests is likely to occur etc.^{211 212}

Fly-tipping

- Environmental Protection Act 1990 (Section 33)
- Controlled Waste (Fixed Penalty Notices) (Scotland) Order 2014

The Environmental Protection Act 1990 (Section 33) prohibits the deposit, treatment, keeping or disposal of controlled waste in or on land unless a permit authorising the deposit is in place. Anyone who commits an offence under this section could be imprisoned for up to six months, fined up to £40,000 or both (with higher penalties and longer sentences if prosecuted at the High Court). Recent FOIs indicate that there have been very few prosecutions, and convictions (not including FPNs, referral to community police or verbal and written warnings) under Section 33, for this offence. In 2017/18 there were 6 successful prosecutions, in 2016/17 there were 7. 2007/08 was a peak year for convictions (27). In most years convictions have been approximately 12 or 13.

A statutory instrument, the Controlled Waste (Fixed Penalty Notices) (Scotland) Order 2014 allows Local Authorities to issue a FPN for fly-tipping of up to £200. Penalties can be issued by the police, Local Authorities, and other public bodies including Loch Lomond and the Trossachs National Park.^{213 214 215}

Dog Fouling

- The Dog Fouling (Scotland) Act 2003
- The Dog Fouling (Fixed Penalty) (Scotland) Order 2016

The Dog Fouling (Scotland) Act 2003 makes it an offence for a person to fail to clear up their dog's waste in certain public places, such as footpaths and pavements. Local Authorities must authorise at least one person to issue Fixed Penalty Notices for the offence and may issue a notice, under The Dog Fouling (Fixed Penalty) (Scotland) Order 2016, for £80.²¹⁶ Statistics gathered by *The National* newspaper indicate that there is tremendous variability in how many FPNs are issued to dog owners for dog fouling (1511 FPNs issued in Glasgow (2016) and Orkney (0), Shetland (0) and Aberdeenshire (1)).²¹⁷

Noise Control

- Part 5 (sections 41 to 54) of the Antisocial Behaviour etc. (Scotland) Act 2004
- Civic Government (Scotland) Act 1982
- Environmental Protection Act 1990
- Control of Pollution Act 1974

Local Authorities have a range of powers to deal with noise problems. The provisions of Part 5 of the Antisocial Behaviour etc. (Scotland) Act 2004 give Local Authorities power to implement a noise nuisance service for up to 24 hours a day, 7 days a week. Local Authority officers have the power to issue warning notices, issue Fixed Penalty Notices and seize and remove noise making equipment.²¹⁸

3.6. Recreation and Culture

- Public Libraries Consolidation (Scotland) Act 1887
- Local Government and Planning Act (Scotland) 1982
- Local Government (Scotland) Act 1973
- Local Government (Scotland) Act 1994
- Local Government in Scotland Act 2003

Local Authorities have a duty to ensure adequate provision of recreational, sporting, cultural and social facilities and activities (Local Government and Planning Act (Scotland) 1982). This duty was transferred to the new unitary authorities under Schedule 13 of the Local Government etc. (Scotland) Act 1994. They may contribute by way of a grant or loan towards the expenses of any organisation or body which, in the opinion of the authority, provides or promotes the provision of cultural activities or facilities whether inside or outside the area of the Local Authority concerned.²¹⁹ (The Scottish Government does not consider that it should define what constitutes adequate provision of facilities. In a written parliamentary answer, the Minister for Public Health and Sport in 2009 stated that “the Scottish Government believes it is for Local Authorities to determine according to local needs and circumstances”.²²⁰ Adequate provision is likely to have been interpreted in various ways by Local Authorities leading to variation dependent on local policy and resources.²²¹)

Local Authorities have the power under the Local Government (Scotland) Act 1994 to contribute by way of grant or loan towards the expenses of any organisation or body which, in the opinion of the authority, provides or promotes the provision of cultural activities or facilities etc. (to promote music, theatre, dance, opera, visual art or other art forms and museums and galleries).²²²

Section 20 of The Local Government (Scotland) Act 2003 provides that Local Authorities have the power to do anything which it considers is likely to promote or improve the wellbeing of its area and the persons within that area (see ‘Advancing Well-being’ power above).²²³

Local Authorities also have the power (under the Public Service Reform (Scotland) Act 2010) to work in partnership with Creative Scotland to support the creative sector in the local area.²²⁴

(Public Libraries: Consolidation (Scotland) Act 1887 – Local Authorities can purchase land or buildings suitable for libraries, museums and art galleries. They have a duty to manage, regulate and control these. Section 163(2) of the Local Government (Scotland) Act 1973 places a duty on authorities to secure the provision of adequate library facilities.)

3.7. Heat and Electricity: Generation and Sale

Background

By 2030 the Scottish Government aims to generate 50% of Scotland's overall energy consumption from renewable sources, 100% of electricity demand equivalent from renewables by 2020, 11% heat demand from renewables by 2020, and by 2050 to have decarbonised the energy system almost completely.^{225 226}

Given that a significant proportion of emissions are attributed to fossil fuel use for heating there has been growing interest in the use of low carbon district heating networks, to contribute to decarbonization goals. Heat networks have been considerably slower to develop in the UK, particularly in comparison with Nordic and Eastern European countries, primarily due to energy supply nationalization, subsequent liberalization in the 1980s, and the long-term strategy of developing domestic natural gas as a secure energy source. The UK government has been keen to accelerate the local development of district heat networks, with heat networks providing local stakeholders with an opportunity to address sustainability, climate change, economic development, fuel poverty, energy security and energy autonomy agendas.^{227 228}

Local Authorities in Scotland have been encouraged, with support from District Heating Scotland,²²⁹ on a voluntary basis, to develop district heating strategies, or to include a district heating element in wider strategies or plans such as Sustainable Energy Action Plans.²³⁰ Scottish Planning Policy states that local development plans should support the development of heat networks in as many locations as possible, even if initially reliant on carbon-based fuels and where heat networks are not viable, microgeneration and heat recovery technologies associated with individual properties should be encouraged.²³¹

There are 800 district and communal heating networks in Scotland, supplying c.25,000 customers. Scottish Government is considering legislation to regulate district and communal heating to set standards and identify the areas most appropriate for district heating (in 2015 it was estimated that 6.7% of Scotland's heat demand could be met by heat networks in 2025). Several funding sources support this work, as well as the Scottish Government generated heat map for Local Authorities to use to visualise and assess who needs heat, heat sources, and how these can be connected efficiently to reduce heat supply costs and the carbon intensity of heat generation.^{232 233}

It is recognised that costs for district heating systems remain higher than for other energy distribution networks, thus requiring a sufficient number of users over a long term to strike a balance between recouping costs and keeping bills affordable. Scottish Government have also funded 23 Local Authorities thus far to develop Local Heat and Energy Efficiency Strategies (LHEES), where it is anticipated that Local Authorities will seek to undertake authority-wide

assessments of the energy performance and heat demand of the existing building stock, socio-economic assessment of potential energy efficiency and heat decarbonisation solutions etc.²³⁴

District heating networks deliver heat from single or multiple energy sources to a number of buildings. Heat sources might include from industrial processes, renewable technologies such as heat pumps, biomass,⁹ solar thermal, and hydrogen, from Combined Heat and Power using traditional fossil fuels, energy from waste, anaerobic digestion or woodfuel, and from thermal storage heated by renewable technologies such as wind. Establishing such networks entails significant infrastructure investment, which is most cost-effective in urban centres.²³⁵ Moreover designing a district heating network requires an understanding of the overall heat demand and patterns of use, as well as long term strategic planning to avoid 'island' developments.²³⁶

UK local government is at early stage in the development of district heating networks, which tend to be small scale, with energy related action tending to focus on efficiencies through building insulation, rather than area-wide investment, with various barriers, particularly lack of funding, staff and resources and high capital costs (so networks may be more suited to urban areas, with higher numbers of end users), lack of expertise and skills, and the absence of specific techniques, rules and contracts.^{237 238} Heat networks could signal a re-emergence of Local Authorities as key energy service providers, requiring the reallocation of decision making, expertise, ownership, and responsibility for energy services.²³⁹

Generation and Sale of Heat and Electricity

- Local Government (Scotland) Act 1973

The Local Government (Scotland) Act 1973 gives Local Authorities the power to generate heat and electricity, and power to purchase, sell and supply heat.²⁴⁰ The extent of Local Authority activity in Scotland, which systems are applied, who the customers are and what the benefits of those schemes may be are difficult to identify. (See Box 5 below for an example of the use of district heating systems in Dundee City).

⁹ Scottish Government encourages adoption of biomass combustion to reduce emissions. However biomass combustion contributes to emissions of air pollutants, especially particulate matter. Evidence indicates that biomass boilers burning wood will not be a major source of PM10 and PM2.5 in urban areas, although where PM levels are already close to the 2010 PM10 objective, biomass might lead to exceedences in some urban areas. Large scale uptake of biomass in urban areas could increase the difficulty in achieving the PM2.5 exposure reduction target of 15% by 2020. Screening tools have been developed for use by Local Authorities to assess possible impact of biomass systems as part of the planning process. See:

<https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2018/03/local-air-quality-management-policy-guidance-scotland/documents/00507617-pdf/00507617-pdf/govscot%3Adocument>

However examples of activity include Aberdeen Heat and Power Ltd, set up by Aberdeen City Council in 2002 as a not-for-profit independent company to develop Combined Heat and Power schemes (CHP) whereby electricity is generated locally for sale, at cost rather than market based heat tariffs, and the heat emitted by the generator is captured and used to heat properties, both residential and public, with the aim of reducing heating costs, fuel poverty and CO2 emissions.^{241 242}

Box 5:

Dundee City Council (with a history of district heating system provision in the 1920s to supply houses on the Logie Estate²⁴³) operates four district heating systems, in the form of hot water from central boiler houses, across residential buildings. The size and scale of Dundee (i.e. more compact than other major Scottish cities) has been deemed potentially one factor, amongst others, that has contributed to the development of these schemes.

The aim has been to link district heating schemes to areas of higher deprivation to address fuel poverty, poverty more broadly, emissions, heating efficiency, and to use the installation of district heating as a means of undertaking much wider regeneration. Central to this has been a need for economies of scale, which means that sufficient numbers of residents are required to make schemes (which tend to be very expensive to set up) more cost effective i.e. they are more suitable for high density housing versus individual homes. Hence the schemes have been applied to council multi-story flats for example in the Dallfield, Lansdowne, Lochee and Whorterbank areas. Properties in Dallfield for example were inspected to address house quality, with new kitchens and bathrooms installed as well as external improvements including cladding and development of community spaces to contribute to making the flats more desirable, using funding from several sources. Renewable forms of energy also connect into this project in the form of solar panels used to generate lighting for stairwells.

A challenge is around how housing estates, and areas of deprivation, on the edge of the city may connect to existing district heating schemes. It is also deemed easier to link district heating into new builds than to retrofit to existing housing. Moreover the existing schemes are a feature of public sector housing and how these might be incorporated into (smaller scale) housing designed and delivered by the private sector will be dependent on national policy and the provision of funding streams (the District Heating Loan Fund in Scotland is open to SMEs), as well as the ambitions of housebuilders.

There are plans to generate power in Dundee using council owned assets (including the upcoming Regional Performance Centre for Sport) to develop a district energy hub (combining heat pumps, gas CHP, solar thermal, PVs, and large thermal stores, with gas boilers for peak times and back-up),

generating more power than is required for these buildings to then link the energy hub to local housing estates, such as the recently regenerated Mill of Mains area.

Future activity is anticipated to link into electricity generated by waste from a private sector contractor (MVV Environment Baldovie Ltd) initially intended for the Michelin Tyre Factory, which is set for closure, and, potentially, to link up with several other public sector partners to supply district heating to a number of public buildings in the city centre.²⁴⁴

Generation and Sale of Heat and Electricity from Renewable Sources

- Local Government (Scotland) Act 1973
- Sale of Electricity by Local Authorities (Scotland) Regulations 2010

The Sale of Electricity by Local Authorities (Scotland) Regulations 2010 permit Local Authorities to sell electricity generated from specific renewable sources (wind, solar, aerothermal, geothermal, hydrothermal and ocean energy, hydropower, biomass, landfill gas, sewage treatment plant gas, and biogases). Previously Local Authorities were only permitted to sell electricity produced from waste or in association with heat.^{245 10}

In relation to community and locally owned renewable energy sources (e.g. wind, hydroelectric, wave and tidal, solar photovoltaics, waste incineration, heat pumps, solar thermal panels, biomass (wood), solar air/solar ventilation systems etc.), a 2018 survey (full, contemporary information from all Local Authorities was not provided to the survey authors) found that the second largest proportion of operational community and local renewable capacity was held by Local Authorities (18% of capacity), behind farms and estates.

The largest number of individual installations were in housing association ownership, followed by Local Authorities. South Lanarkshire and Highland councils held the largest share of Local Authority owned renewable energy capacity (by MW) at June 2018. Stirling and South Lanarkshire councils had the largest numbers of installations by a considerable margin, with 2,260 primarily heat pumps and 1,780 primarily solar PV individual installations respectively. By comparison, Fife had 830 systems, City of Edinburgh had 55 and Dumfries & Galloway had 35. Across all Local Authorities included in the survey, biomass had the largest share of capacity, followed by heat pumps, solar PV, energy from waste and solar thermal and wind.²⁴⁶

Note: one Local Authority respondent mentioned that the business case for the development and extension of renewable forms of energy within the Local Authority area had to some extent been undermined by reduction to the

¹⁰ For further information about what Local Authorities might do in relation to these powers see: <http://www.districtheatingscotland.com/wp-content/uploads/2015/12/DistrictHeatingLegalPowerReportV2Nov2014.pdf>

payments made by the UK Feed in Tariff scheme (now closed) i.e. a payment for generating power from renewable sources.

3.8. Alcohol Licensing

- Licensing (Scotland) Act 2005

Further Acts that impact upon the licensing regime in Scotland include:

- Alcohol etc. (Scotland) Act 2010
- Criminal Justice and Licensing (Scotland) Act 2010
- Alcohol (Minimum Pricing) (Scotland) Act 2012
- Air Weapons and Licensing (Scotland) Act 2015²⁴⁷

The Licensing (Scotland) Act 2005 gave local Licensing Boards the responsibility to grant or reject alcohol licenses and a statutory duty to focus on five 'licensing objectives' (preventing crime and disorder, securing public safety, preventing public nuisance, protecting and improving public health and protecting children from harm). These are to be viewed as an ongoing aspiration as opposed to a fixed standard.²⁴⁸

Licensing Boards are quasi-judicial bodies consisting of locally elected councillors, with support from Local Authority staff, including a qualified solicitor who provides legal advice. Licensing Boards are entirely separate legal entities from Local Authorities.^{249 250} Local Authorities must ensure there is a Board for a Local Authority area, although the Act allows Local Authorities the discretion to provide a single Board or to subdivide the local area and provide multiple Boards. Boards must publish a statement of licensing policy, assess overprovision of alcohol and to keep a public register etc. Policy statements must ensure that policies seek to promote the licensing objectives.²⁵¹

Licensing Boards have discretion to determine appropriate licensing arrangements according to local circumstances and their own legal advice. They have discretion to grant a licence taking into account any police objections and Licensing Standards Officers' comments; and having regard to the licensing objectives, they may hold a hearing but this is not mandatory. They have the discretion to impose further conditions on premises licences under section 27(6) of the Act with consistency when imposing these for similar types of premises.²⁵²

In terms of overprovision, each licensing policy statement published by a Licensing Board must state the extent to which the Board considers there to be overprovision of all or particular licensed premises in any locality within the Board's area.²⁵³ This provides the grounds for refusal of a premises licence application in areas identified as an overprovision locality. (Statements should provide the policy on which Boards will base their decisions in implementing their functions under the Act, however there appears to be flexibility, excluding overprovision, to some extent in what they might wish to include in those statements.²⁵⁴ The Air Weapons and Licensing (Scotland) Act 2015 places a

duty on Boards to publish an annual report, explaining how the Board has had regard to the licensing objectives etc.²⁵⁵)

It is a duty, but Licensing Boards have flexibility to decide if there is overprovision. They have a duty to consult and gather evidence but can determine the overprovision policy and how the evidence will be interpreted and weighted. Their assessment must also be based on credible evidence of a causal link between the engagement of one or more of the licensing objectives and a concentration of licensed premises in a locality. For a Board to find a harm will arise as a consequence of the sale of alcohol, there must exist a causal link between the alleged cause and the alleged harm etc.²⁵⁶

Critiques are emerging of the Scottish licensing system^{257 258 259} (and recognition that considerable effort in promoting the licensing objectives and policy implementation has taken place, although with variation in this²⁶⁰) and e.g. as Wright states, Boards can act autonomously to interpret evidence about alcohol availability and to establish local thresholds for overprovision as they see fit, with no national 'example' or template overprovision statement that they can use.²⁶¹

More broadly, the licensing system is designed to allow for local variation and discretion in decision-making, but the existence of objectives is intended to establish some degree of consistency. However this consistency is not always apparent between Boards or within them, with inconsistency and variability in how licensing is applied. Fear of litigation from licence applicants and lack of clarity e.g. in relation to overprovision and in effectively linking population level harms to individual premises are likely to be the key barriers in applying restrictive policies.²⁶²

In terms of accountability, Wright for example argues that legislation has placed 'councillors on quasi-judicial, administrative boards but has not developed a corresponding system to hold them accountable for their actions on it'. Moreover Boards sit independently from the established accountability regime for other local council committees, and when compared with others who have alcohol policy implementation duties (e.g. Alcohol and Drug Partnerships), may be deemed to be less accountable for their decisions than ADPs. The upshot is 'a system in which Licensing Boards continue to act with problematic levels of flexibility and autonomy from the rest of the alcohol policy implementation system' thereby creating a 'tension between licensing legislation and enacted licensing practices'.²⁶³

Local Licensing Forums

Under the 2005 Act Local Authorities are required to establish Local Licensing Forums for their area, of 5 to 21 members. Where a council area is divided into licensing divisions, Local Authorities may, instead of establishing a Local Licensing Forum, establish separate such Forums for each division.

In appointing members of a Forum, the Local Authority must ensure as far as possible that the membership of the Forum is representative of the interests of persons who have an interest which is relevant to the Forum's general functions. Membership includes the Licensing Standards Officer for the area and a representative of the local health board, the Chief Constable, and others with an interest in licensing (e.g. education, social work, local residents, licence holders), with links out to the Local Alcohol Action Teams, a representative of which might sit on the Forum. Local Authorities may also place a member of the Board on the Forum.

Forums (which should be independent and expert, and have an identity separate from the Board or any other interest groups) review the operation of the licensing system in their area and give general advice to the Board. They cannot comment on individual applications. The Board has a duty to 'have regard' to the Forum's views and must offer reasons where it takes decisions against the advice of the Forum.^{264 265 266 267}

According to a recent Scottish Parliament Local Government and Communities Committee meeting, 'concerns have been expressed that in some areas, Forums have not been fulfilling their statutory purpose, with irregular meetings due to a lack of participation by some members.'²⁶⁸ There is a perception that Forums are not functioning as well as they should with variability across Scotland and, while there is evidence of good practice, there also appear to be questions for some Forums around leadership, their role and remit, lack of powers, competing interests on Forums, bias towards the licensed trade, involving and engaging specific groups and the community, and retaining members.^{269 270 271}

Licensing Standards Officers

Local Authorities are responsible for employing Licensing Standards Officers (LSO) under the Licensing (Scotland) Act 2005. Each council must appoint at least one LSO. LSOs have several functions and these include:

- providing information and guidance concerning the operation of the Act;
- supervising the compliance by the holders of premises and occasional licences with the conditions of their licences and other requirements of this Act (includes powers to issue notices to licence holders; and in relation to premises licences, to make licence review applications);
- providing information to Licensing Boards about any conduct of holders of, or persons applying for, personal licences in the area, which is inconsistent with the licensing objectives; and
- providing mediation services for the purpose of avoiding or resolving disputes or disagreements between licence holders etc.

The LSO has the power if they believe that licence holders are breaching conditions to e.g. issue a notice to the holder of the licence requiring action be taken to remedy the breach or to review the licence.

An LSO has power, for the purpose of determining whether the activities being carried out in any licensed premises in the area are being carried on in accordance with the licence, to enter the premises at any time to carry out an inspection.^{272 273}

Byelaws

- Local Government (Scotland) Act 1973
- Antisocial Behaviour etc. (Scotland) Act 2004

Under section 201(1) of the Local Government (Scotland) Act 1973, a Local Authority may make Byelaws for the good rule and government of the whole or part of their area, and for the prevention of nuisances (Byelaws cannot be made if there is a provision for that purpose under another piece of legislation).

Drinking bans in public places:

Byelaws may include banning the consumption of alcohol in designated public places under provisions contained in the 1973 Act subject to confirmation by the Scottish Ministers (see Circular LJ/02/2014²⁷⁴).

Sections 128 and 129 of the Antisocial Behaviour etc. (Scotland) Act 2004 gives police the power to issue a Fixed Penalty Notice for drinking alcohol in contravention of Byelaws made under sections 201-203 of the 1973 Act. If an offender refuses to pay the FPN, or challenges the allegation in court and is found guilty, the offender is liable on summary conviction to a fine not exceeding level 2 (£500) on the standard scale.²⁷⁵

27 Local Authorities have byelaws that prohibit the drinking of alcohol in designated public places (all times or specific times) in more than 480 towns and villages, together with built up areas in Glasgow and Edinburgh (see the Improvement Service for information about the availability of alcohol prohibition area datasets.)²⁷⁶ For example, byelaws on drinking in public places in Glasgow were originally introduced in August 1996 under sections 201-203 of the 1973 Act and amended in 2008 under section 202A of the same Act. Under these Byelaws, subject to certain exceptions, any person who consumes alcoholic liquor in a designated place or is found to be in possession of an open container containing alcohol shall be guilty of an offence.²⁷⁷

Anti-Social Behaviour (Scotland) Act 2004

Local Authorities have powers under the Anti-Social Behaviour (Scotland) Act 2004 to apply noise controls to specific areas and at specific times. Closing a venue can be authorised by a senior police officer, following consultation with the Local Authority.²⁷⁸

3.9. Gambling

- The Gambling Act (2005)

Gambling regulation is shared between Licensing Boards and the Gambling Commission. The Commission states that Licensing Boards (a separate legal entity from Local Authorities²⁷⁹) have a broad discretion to regulate local provision of gambling under the Gambling Act (2005), e.g. to: issue a statement of licensing policy, setting expectations about how gambling will be regulated in a particular area; grant, refuse or attach conditions to premises licences; review premises licences; and to proactively engage local operators to mitigate risks to the licensing objectives, prompted by justifiable concerns.

The Act places a legal duty on both the Commission and licensing authorities (Boards in Scotland) to aim to permit gambling, in so far as it is considered to be reasonably consistent with the licensing objectives. Licensing authorities have a duty to pursue the licensing objectives and all policy statements should begin by stating the three licensing objectives (s.1 of the Act), which the policy will promote:

1. preventing gambling from being a source of crime or disorder, being associated with crime or disorder, or being used to support crime;
2. ensuring that gambling is conducted in a fair and open way; and
3. protecting children and other vulnerable persons from being harmed or exploited by gambling.

In exercising its functions under the Act, Section 153 states that the licensing authority shall aim to permit the use of premises for gambling in so far as it thinks it is:

- a. in accordance with any relevant code of practice under section 24;
- b. in accordance with any relevant guidance issued by the Commission under section 25;
- c. reasonably consistent with the licensing objectives (subject to a and b); and
- d. in accordance with the licensing authority's statement of licensing policy (policy statement) (subject to a to c above).

The 'aim to permit' framework in the Act provides wide scope for licensing authorities to impose conditions on a premises licence, reject, review or revoke premises licences etc. and engage with local operators to mitigate risks to the licensing objectives.

S.349 of the Act requires all licensing authorities to publish a statement of licensing principles they propose to apply in exercising their functions under the Act. This forms the licensing authority's mandate for managing local gambling

provision and sets out how they view local risks and its expectations in relation to operators with local premises.

Licensing Boards in Scotland were expected to review and publish their policy statements by January 2019. The statement is described by the Gambling Commission as ‘an important part of the architecture of local gambling regulation and we expect that each licensing board will use it to set out the local issues, priorities and risks that inform and underpin its approach to local regulation.’ The form of the statement can largely be determined by the licensing authority itself.

(See: <http://www.gamblingcommission.gov.uk/PDF/GLA5.pdf>)

The statement should set out what factors it is likely to take into account when considering applications for premises licences and licence reviews etc. This may be informed by the licensing authority’s local area profile (see below) and e.g. the proximity of gambling premises to schools, vulnerable adult centres and residential areas. A statement may set out whether there is a need for conditions to mitigate risks, in light of the third licensing objective (protecting children and other vulnerable persons). Where a statement makes clear reference to local risks, operators may be able to better understand and proactively mitigate risks. They are required to share their risk assessments with licensing authorities when applying for or varying a premises licence. Each application or review will be decided on its merits and will depend to a large extent on the gambling type proposed for the premises.

In terms of local area profiles the Commission states that licensing authorities may wish to complete an assessment to map local areas of concern. There is no requirement to do so but this is deemed helpful for the authority and operators, in having a better awareness of risks (potential and actual), using information held by the authority and partners with proactive engagement with local organisations (health, housing, education, community, GamCare or equivalent).

Local area profiles are viewed as supporting more constructive engagement with licensees to coordinate the response to local risks, providing greater clarity for operators around risk to inform their risk assessments and to support licensing authorities to make robust but fair decisions, based on a clear, published set of factors and risks that are less susceptible to challenge. There is no prescriptive template for a profile.²⁸⁰ (See Glasgow City Council: Guidance on Undertaking Local Gambling Risk Assessments, 2019²⁸¹).

Licensing Standards Officers

- Licensing (Scotland) Act 2005
- The Gambling Act (2005)

LSOs are appointed under the Licensing (Scotland) Act 2005 and have various functions. They have a general duty to supervise compliance with the requirements of the 2005 Act and may enter and inspect licensed premises for that purpose. They provide information and guidance on the operation of the Act, supervising compliance with premises and occasional licences and seeking review of a premises licence where appropriate. A review may be sought where an LSO considers that illegal activity may be taking place on licensed premises, including illegal gambling etc.²⁸²

The picture, as far as can be gleaned from secondary sources in terms of how LSOs, working for Local Authorities and appointed under the Licensing (Scotland) Act 2005, might operate under the Gambling Act 2005 as 'authorised persons' (section 304 of the Gambling Act) is complex. For example:

The perception, as COSLA have stated (2019), is that Local Authorities in Scotland have limited scope under existing licensing legislation, and planning, to address gambling, and particularly where they perceive that there are clear links between gambling, the location of gambling establishments and areas of lower economic activity.

COSLA further state that there is no firm legal basis for Local Authority officers to carry out enforcement activities in relation to gambling in Scotland. They state that section 304 of the Gambling Act conveys enforcement powers on authorised officers of the licensing authority. However in Scotland the licensing authority is the Licensing Board, a separate legal entity with no officers. They state that the wording of the Gambling Act causes problems for Scottish Local Authorities and that legislative changes are required to allow proper and legal enforcement activity to be conducted in Scotland, which would be less likely to be subject to legal challenge.²⁸³

The Gambling Commission had set out some advice around this (c.2015). They state that authorised persons in Scotland have an important role to play in securing compliance with the Gambling Act. An LSO of a Scottish local authority may be an 'authorised person' in terms of the Act, such as for example an environmental health officer, and where so they can carry out formal enforcement activity. Those powers are quite separate from the powers conferred on LSOs in relation to alcohol licensing by the Licensing (Scotland) Act 2005.

The Commission's understanding is that the enforcement powers contained in the Gambling Act cannot be exercised 'as of right' by an LSO.

However the Act provides that 'an officer of an authority other than a licensing authority' is an 'authorised person' where the authority has statutory functions

relating to minimising or preventing the risk of pollution of the environment or harm to human health, and the officer is authorised by the authority for the purpose of exercising any of those statutory functions (under section 304(3)). This provision does not require any positive action by authorities (including local authorities) to designate officers of the authority as authorised persons for the purposes of the Act.

The Commission states that it is their view that any officers of authorities with the statutory functions described who have been authorised by the authority in connection with those functions will already, as a matter of law, be authorised persons in terms of the Act, such as environmental health officers. They state that it is a matter for Local Authorities and Licensing Boards to consider how those officers are currently discharging their statutory functions under the Act.

An LSO in Scotland is not, by virtue simply of being an LSO, an ‘authorised person’ in the Act, but LSOs may be authorised persons because they are as a matter of fact exercising other statutory powers on behalf of their Local Authority.²⁸⁴

Planning Policy

In terms of gambling, Local Development Plans and ‘change of use’ legislation, Local Authorities are required to produce a Development Plan to set out a long term vision for where development should and should not happen.²⁸⁵ In Scottish Planning Policy (2014) there is scant mention of gambling, betting or pay day lenders etc. and where reference is made, the means by which Local Authorities might address these via the planning system remains vague.

The policy does state however that: *plans should include policies to support an appropriate mix of uses in town centres, local centres and high streets. Where a town centre strategy indicates that further provision of particular activities would undermine the character and amenity of centres or the well-being of communities, plans should include policies to prevent such over-provision and clustering.*²⁸⁶

Change of planning class:

- The Town and Country Planning (Miscellaneous Amendment and Transitional Saving Provision) (Scotland) Order 2016

The effect of the Order is that any change of use to a betting shop (or pay day lending premises) is likely to require a planning application. The Order also amends the General Permitted Development Order (GDPO) to ensure that a change of use from a Betting Office or from Pay Day Lending to Class 1 (shops) or Class 2 (financial, professional and other services) is permitted development.^{287 288}

The extent to which Local Authorities are able to use the planning system successfully and to reject planning applications from gambling operators for physical premises without then risking or being subject to legal action by those

operators is unclear. (The existing powers clearly have no traction on the growing online betting industry).

3.10. Sexual Entertainment Venues

- Air Weapons and Licensing (Scotland) Act 2015

The provisions of the Act which relate to the licensing of sexual entertainment venues (SEV) came into force on 26 April 2019. The licensing of SEV is not mandatory and Local Authorities can determine if they wish to licence SEV, to limit their numbers and to determine individual licence applications.

When deciding if to licence a SEV, Local Authorities should obtain independent legal advice in order to ensure that they are able to mitigate the risks of legal challenge to an acceptable level, and take into account the Public Sector Equality Duty to which Local Authorities are required to pay 'due regard' when carrying out their functions and the specific duty to assess and review policies and practices.

Where Local Authorities choose (even where there are currently no SEVs in the area) to licence SEVs, they must pass a resolution for SEV licensing to have effect in their area, and prepare an SEV policy statement. The statement should set out and justify their position, provide details of possible impact of licensing SEVs e.g. in terms of nuisance, crime, disorder, public safety, protecting children and young people from harm and reducing violence against women.

When considering whether to pass a resolution to licence SEVs it is suggested that Local Authorities consider issues such as the location of schools, places of worship, residential areas, women's refuges and services for women, children and young people, anti-social behaviour incidents, sexual assaults, prostitution and incidents of human trafficking or exploitation locally.

Local Authorities may also seek the views of local people and businesses prior to deciding whether to pass a resolution, as well as operators of known SEVs, local police and Human Trafficking units. Local Authorities who choose to licence SEVs must determine the appropriate number of SEVs for their area and for each relevant locality within their area. They may refuse applications on the grounds that the Local Authority area or relevant locality is equal to or exceeds the number of SEVs that the authority considers appropriate (nil may be considered an appropriate number).²⁸⁹ (Edinburgh and Glasgow City Council's have both sought to seek the views of the public around this).

3.11. Housing

Background

Local Authorities have a legal duty to assess and respond to housing need, homelessness and threatened homelessness, to inspect houses to ensure they are of a tolerable standard (and where not, are closed or improved), licence Houses in Multiple Occupation (HMO) and keep a register of all private landlords. They must provide adaptations to private housing to meet the needs of disabled occupants.

Local Authorities have a duty to produce a Local Housing Strategy (LHS) designed to address housing need in the area. This should reflect the findings of a Housing Need and Demand Assessment (HNDA) and be linked to the area's Local Development Plan. A LHS is used to develop Strategic Housing Investment Plans. Once housing need has been assessed, councils must then identify the funding and developers to build the new homes needed. In the current financial climate this can be difficult. Since 2012/13, Local Authorities determine where Scottish Government subsidies for new homes within their area should be allocated, and for monitoring and ensuring local developments are built.^{290 291 292}

Local Authorities have a range of powers that can be applied e.g. to cap rents and generate physical and environmental improvements and reduce the number of unoccupied homes. These include:

Housing - Rent Pressure Zones (private sector tenants)

- The Private Housing (Tenancies) (Scotland) Act 2016

Local Authorities have the power to apply to Scottish Ministers to have an area designated as a 'rent pressure zone' (RPZ) if they can prove that:

- rents in the area are rising too much;
- rent rises are causing problems for tenants; or
- the local council is coming under pressure to provide housing or subsidise the cost of housing as a result.

Zones apply to rent increases for tenants with a private residential tenancy. Rent increases for tenants with a short assured or assured tenancy are not affected.¹¹ If an area is designated a RPZ, a cap is set on how much rents are allowed to increase each year in that area. Scottish Ministers must consult landlord and tenant representatives before they make any area a RPZ.²⁹³ The

¹¹ From December 2017 the private residential tenancy (which is open-ended, which means a landlord will no longer be able to ask a tenant to leave simply because the fixed term has ended) came into force, replacing the assured and short assured tenancy agreements for all new tenancies. See: <https://www.gov.scot/policies/private-renting/private-tenancy-reform/>

provisions entered into force on 1 December 2017. Currently there are no RPZs in Scotland.²⁹⁴

Note: A 2018 report from Shelter Scotland states that there are currently no private rent data sources that would provide the evidence needed to support a RPZ application. Any Local Authority data gathering exercise would require to be an on-going exercise, in order to build up information that tracks annual rent increases to both inform any application process and, thereafter, to police RPZ adherence. Cutbacks mean that Local Authority in-house research capacity is now thin on the ground; so authorities would more than likely need to commission consultants to gather and analyse the necessary data, which is likely to add to the cost of a challenging and speculative endeavour.²⁹⁵

Housing - Enhanced Enforcement Areas

- Housing (Scotland) Act 2014 (SSI 2015/252)
- Enhanced Enforcement Areas Schemes (Scotland) Regulations 2015

Enhanced Enforcement Areas Scheme (Scotland) Regulations 2015 enable a Local Authority to apply for additional discretionary powers so that it can target enforcement action at an area characterised by poor housing conditions in the private rented sector. The powers are intended to be used to deal with the most exceptional cases of poor standards. e.g.:

- where there is a concentration of properties let by private landlords in a geographic area;
- where those properties are characterised as being of a poor environmental standard;
- there is overcrowding; and
- a prevalence of anti-social behaviour.

The Housing (Scotland) Act 2014 prescribes that the designation will last for five years once granted by Scottish Ministers and allows the Local Authority to reapply for designation before the five years has expired. Powers include the request for an enhanced criminal record check for landlords and a requirement for existing landlords applying for registration or renewing their registration, and the unregistered, to produce documents or evidence for inspection.²⁹⁶ For the example of the application of the regulations see Govanhill, Glasgow.²⁹⁷ Compulsory Purchase Orders (see below) are now being applied within the Govanhill Enhanced Enforcement Area.²⁹⁸

Compulsory Purchase Orders

- Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947

Local Authorities, with several other public sector organisations and infrastructure providers, have powers to use Compulsory Purchase Orders

(CPOs) to purchase land, or property, without the agreement of the owner if there is considered to be a strong enough case such as economic benefits from investment, or environmental or social benefits or benefits derived from bringing a derelict property or vacant land back into use. (There are currently around 11,600 hectares, twice the size of Dundee, of derelict and urban vacant land in Scotland, and more than 37,000 long-term empty homes. The figures have not changed substantially since the late 1990s, making this an entrenched problem.²⁹⁹) Scottish Ministers will determine if the CPO submitted to them should be confirmed (with or without modification) or not confirmed.^{300 301}

How far Local Authorities are willing to apply CPOs is unclear. The perception is that there is a reluctance to apply for CPOs because of concerns in relation to the cost, timescales, risks and the complexity of pursuing and securing a CPO. A CPO therefore might be viewed as a last resort, after a range of other options have been applied and exhausted, e.g. in relation to engaging with an owner to bring a property back into use. In terms of the latter a Local Authority must also consider if a property, or land purchased, can effectively be brought back into use (e.g. sold or used for social housing).

Local Authorities may also lack the capacity, resources or inclination to take on responsibility for a site themselves. A proposed additional enforcement power is the Compulsory Sale Order (CSO). This would allow local authorities to bring problematic vacant sites and buildings back into productive use to tackle long-term vacancy and dereliction by requiring that an empty home that has been vacant or derelict, for an undue period of time be sold by public auction to the highest bidder.³⁰²

Housing - other powers

- Building (Scotland) Act 2003
- Section 89 of the Antisocial Behaviour etc. (Scotland) Act 2004
- The Housing (Scotland) Act 2006
- Private Rented Housing (Scotland) Act 2011
- The Housing (Scotland) Act 2014
- Local Byelaws

Local Authorities have a number of powers to enforce improvements and repairs on privately owned property, address overcrowding and remove landlords from Local Authority registers:

- **Landlord Register** - each Local Authority is expected to prepare and maintain a public register of all private landlords in their area. The registration regime should help landlords reach the standards required by legislation to privately let properties (the proportion of properties in Scotland in the private rented sector has risen to around 15%, around 382,000 dwellings³⁰³). Those landlords who are unwilling or unable to achieve these standards should be removed from the rental market. The register will

provide some basic information about the private rented sector in a Local Authority area. If an individual fails the 'fit and proper' test, their application for registration will be refused. Information which comes to light after a person is registered can lead to them being removed from the register. Local Authorities have the power to remove a landlord from the register using Section 89 of the Antisocial Behaviour etc. (Scotland) Act 2004. There is a right to appeal against these decisions.^{304 305 306} (The perception is that the power is not used often enough, although there have been several high profile examples in the media).

- **Third Party Applications** - The Housing (Scotland) Act 2014 (Section 25) provides Local Authorities with the power to make a third party application to the Housing and Property Chamber of the First Tier Tribunal (FTT) to enforce the repairing standard. This includes a right of entry to any house in respect of which a third party application to the FTT may be made. This power was introduced because vulnerable tenants were often not willing to exercise their right to report their landlord to the FTT in case the landlord ended their tenancy. Once the landlord is notified about work that is needed to ensure that the house meets the repairing standard³⁰⁷ (The Repairing Standard, contained in the Housing (Scotland) Act 2006, covers the legal and contractual obligations of private landlords to ensure that a property meets a minimum physical standard) the evidence suggests that in many cases the repairs are completed without need for further enforcement.

Where a landlord has failed to meet the repairing standard, the FTT will issue a Repairing Standard Enforcement Order. It is anticipated that where a landlord who is issued with an order, or fails to comply, it should be considered if they are a fit and proper person and they could therefore be refused or removed from the landlord register.^{308 309} How often the 3rd party power is used is unclear (as at 30 June 2017, 75 third party applications had been made, from 15 Local Authority areas). All decisions are in the public domain and are available via the Tribunal website. See: <https://www.housingandpropertychamber.scot/>

- **Work Notices** - the failure of a house to meet the tolerable standard (i.e. it is sub-standard) allows Local Authorities to take statutory action to improve, close or demolish a house. The Housing (Scotland) Act 2006 (section 30) (focused on condition and quality in private sector housing) widens the circumstances in which Local Authorities can use enforcement powers and replaces existing repair notices and improvement orders with a new power to serve a work notice.
- **Power of Majority to Cover Maintenance Costs** - under The Housing (Scotland) Act 2006 (Section 50), where several home owners form part of the same premises, and a majority agree to carry out maintenance, where an owner has not complied with the requirement and is unable or it is unreasonable for them to contribute (or they cannot be identified) the Local Authority has the power to pay the share of the estimated costs of any owner who has not complied with a requirement to make such a deposit.³¹⁰

- **Housing Renewal Areas** - HRAs are powers under The Housing (Scotland) Act 2006 to deal with poor quality housing issues on an area basis. They replace the previous arrangements to designate Housing Action Areas, and Local Authorities will have more flexibility in when they can use them. Powers can be used where a significant number of properties are sub-standard and/or where any houses are adversely affecting the amenity of an area. HRA action plans must determine which houses are to be closed or demolished or have work carried out.³¹¹
- **Maintenance Orders** - these can be issued by Local Authorities to ensure that properties in private ownership are maintained (e.g. repairs, painting, cleaning) under Section 42 of the Housing (Scotland) Act 2006.¹²
- **Defective Building Notices** - these can be used to ensure that if a building has defects (e.g. leaking roof, defective stonework) which are likely to cause significant deterioration of the building, the Local Authority has powers to deal with this by serving defective building notices under the Building (Scotland) Act 2003.³¹²
- **Overcrowding** - Overcrowding Statutory Notices (Private Rented Housing (Scotland) Act 2011) may be served to private sector landlords where there is overcrowding, setting out how the overcrowding may be addressed.³¹³
- **Local Byelaws** - using notices and orders to carry out work under local Byelaws, Local Authorities can also enforce cleaning or painting of common stairs and passageways and cleaning of back-courts in blocks of flats etc.³¹⁴

Schemes of Assistance

- The Housing (Scotland) Act 2006

The scheme replaced the previous system of private sector home improvement grants. Local Authorities have powers to maintain and improve the condition of private sector housing in their area. If an owner needs help to look after their home, the scheme allows Local Authorities to provide assistance. This can include advice and guidance, practical help, or grants or loans. Local Authorities will determine what types of assistance are available locally. They must prepare a statement providing information about assistance, assist owners who have been served a statutory work notice requiring them to bring a house into a reasonable state of repair and provide grant assistance to adapt homes to meet the needs of disabled people, other than for home extensions (all other

12 Note: Statistics indicate that maintenance order powers are used infrequently. The Commission for Housing and Wellbeing (2015) recommended that the Scottish Government review the use of a number of powers in the Housing (Scotland) Act, 2006 (renewal areas, works notices, and maintenance orders). Sources: http://www.parliament.scot/ResearchBriefingsAndFactsheets/SB_16-96_Housing_Subject_Profile.pdf / <http://housingandwellbeing.org/assets/documents/Commission-Final-Report.pdf>

assistance is discretionary). In 2017-18, total spend was almost £38.6 million and 5,599 grants were paid to disabled households totalling £21.9 million.³¹⁵

Housing - Stair lighting

- Civic Government (Scotland) Act 1982 (Section 90)

Councils have the power to maintain and repair stair lighting under Section 90 of the Civic Government (Scotland) Act 1982 but they are not obliged to do so. However the Occupiers' Liability (Scotland) Act 1960 states that occupiers / owners have a legal duty of care to look after people entering their premises.^{316 317} Since 2016, Edinburgh City Council has provided stair lighting services only in blocks of flats where the council owns properties.³¹⁸

Affordable Housing

Local Authorities, as both the statutory housing and planning authority, are responsible for assessing housing requirements, ensuring housing land supply and the delivery of both market and affordable housing. Affordable housing is defined broadly as housing of a reasonable quality that is affordable to those on modest incomes. It may include social rented accommodation, mid-market rented accommodation, shared ownership, shared equity, housing sold at a discount (including plots for self-build), and low cost housing without subsidy.

Local Housing Strategies are expected to draw on the findings of the Housing Need and Demand Assessment to inform its approach to housing investment and delivery and link to Local Development Plans. Strategies should set out the Local Authority's view of the type and level of housing to be delivered over the period of the plan in its Housing Supply Target taking into account wider economic, social and environmental factors, issues of capacity, resource and deliverability. Where the HNDA and housing strategy identify a shortage of affordable housing, the Local Development Plan should set out the role that planning will take in addressing this.^{319 320}

Local Authorities have discretion therefore to:

- determine the nature and extent of housing need and demand;
- develop a locally-based affordable housing policy framework;
- secure contributions from developers for affordable housing provision;
- bring forward their own resources to provide new affordable houses; and
- support affordable housing provision by Registered Social Landlords.³²¹

³²²

Private housing developments are required to provide an element of affordable housing, with Scottish Planning Policy suggesting up to 25% of the homes on each site. Local Authorities may seek a percentage affordable housing contribution from developers of new housing developments where this is justified by the HNDA and included in the LHS and development plan. The

benchmark figure is that each site should contribute 25% of the total number of housing units as affordable housing. If a different percentage is required locally, justified by the HNDA and identified in the LHS and development plan, then the 25% benchmark does not apply.^{323 324}

Houses of Multiple Occupancy

- The Housing (Scotland) Act 2006

It is mandatory for a Local Authority to introduce a HMO licensing regime. They have the power to refuse a HMO license if there is already an overprovision of HMOs in an area or if the occupation of the accommodation as an HMO would breach planning control. They inspect a property if it is believed that it is not in a satisfactory state, and impose an amenity order if required, requiring work to be carried out. If the owner does not carry out the work the Local Authority can carry out the work and recover costs. Local Authorities have the power to fix a limit on the number of individuals who can live in an HMO to prevent or reduce overcrowding.^{325 326}

Council Tax (second homes / unoccupied properties)

- The Council Tax (Variation for Unoccupied Dwellings) (Scotland) Regulations 2013

Councils set the Council Tax rate for their area although Scottish Government and COSLA have agreed that increases be capped at 3% during 2017/18 and 2018/19.

Councils have discretion to apply a discount of between 10%-50%, or may apply no discount, on second homes (not a main residence and occupied for at least 25 days a year). Job-related dwellings or purpose-built holiday homes must have a 50% discount applied.

Councils also have discretion to vary the council tax payable on unoccupied properties. Initially a discount of between 10%-50% is required, but after a property is unoccupied for 12 months (or 24 months if being actively marketed for sale or let), an increase of up to 100% can be imposed to encourage owners to bring empty homes back into use. The Regulations are designed to help local authorities encourage owners to bring empty properties back into use, to increase housing supply and reduce the blight on communities caused by houses being left empty and in a state of disrepair.³²⁷

Revenue generated from applying Council Tax to second homes and unoccupied properties is reserved for spending that supports the provision of new affordable housing. Any additional revenue raised from further reduced discounts, or applying a levy, can be used as the Local Authority sees fit.³²⁸

Information supplied by Shelter Scotland indicates that most Local Authorities are using these powers to some extent, and most are now using the powers to increase council tax to 100% (or more), with a small number who are currently not doing so proposing or discussing how they may use the powers. Where the tax is applied effectively it is deemed to be useful in bringing homes back into use but where applied uniformly, without discretion in individual cases it might have the opposite effect by adding to the financial hardship owners may be facing, further limiting their resources to bring a property back to a condition where it is suitable for sale or rent.

(For further information about Local Authority activity to address empty homes, such as the employment of Empty Homes Officers, see the Scottish Empty Homes Partnership:

https://scotland.shelter.org.uk/__data/assets/pdf_file/0006/1539483/Shelter_EmptyHomes_AnnualReport_2018.pdf)

3.12. Local Food Environment

Planning Policy

There appear to be relatively few powers at the disposal of Local Authorities that allow them to modify the local food environment. One area of interest has been around the planning system. This includes Local Authority Development Plans, the means by which they set out what is desirable and acceptable in terms of future development. Local Authorities can therefore respond to planning applications based on the aspirations of Development Plans. In theory, Local Authorities could limit the number of food outlets in a particular area if there is reason to do so (e.g. to limit particular types of food outlet around schools) in line with Development Plans.³²⁹

In practice, it is not necessarily the case that the planning system is being used by Local Authorities to effect change in local food environments. For example, recent research indicates that the opportunities by which Local Authorities are able to use the planning system (deemed to play a key role in delivering high quality places³³⁰) to make changes to the local food environment, on the grounds of improving health and reducing obesity levels, are slight (including in comparison with Local Authorities in England). The findings indicate that planning policy in Scotland, in the form of National Planning Framework 3 (2014) and Scottish Planning Policy (2014) are not expressly focused on modifying local food environments or on addressing obesity. Moreover Local Authority planning policies, as stated in Development Plans, are not linked to local food environments e.g. to address issues such as obesity and the food environment around schools.

In terms of hot food takeaways, the research identified that there is no planning policy framework in Scotland against which to determine hot food takeaway planning applications on health grounds. Therefore the absence of relevant planning policy means that applications for hot food takeaways cannot be rejected by Local Authorities on the basis of health.

The research found however that in England, several Local Authorities have sought via development and local plans and /or supplementary planning documents or public health evidence (typically setting out a need for exclusion zones around schools), to provide a means whereby food takeaway planning applications, or change of use from one class of use to another (i.e. change of property use from retail use to takeaway use¹³), can be judged on health grounds. These have largely stood up to planning appeals and challenges.³³¹

¹³ The Town and Country Planning (Use Classes) (Scotland) Order 1997 is applied in Scotland to categorise different properties by type (use classes), with planning permission required for change of use e.g. from a shop to a hot food takeaway. In England, The Statutory Instrument 2005/84, amended The Town & Country Planning (Use Classes) Order 1987, in 2005, and offers greater disaggregation of use classes in comparison with Scotland. See: <https://www.gov.scot/binaries/content/documents/govscot/publications/research-and->

If the Planning (Scotland) Bill is passed, it is anticipated that this could provide the opportunity to consider how health and the planning system might better interact, and health and obesity, be factored into local decision making around the food environment.

Street Traders (within the vicinity of schools)

- The Civic Government (Scotland) Act 1982

In terms of hot food takeaway vans / kiosks, the licensing of street traders falls under The Civic Government (Scotland) Act 1982. A Local Authority has discretion to attach conditions to licences as it sees fit, that relate to local situations and / or are appropriate for a particular Local Authority area. It may be that the Local Authority's resolution in respect of street traders will require to be amended in accordance with the statutory process detailed in section 9 of the Act in order that a new condition can be attached to the licence.

All 32 Local Authorities (at 2014) licence street traders, 14 placed a condition / restriction on trader's licences to restrict their operation within the vicinity of schools. Restrictions might relate to the area and / or times within which street traders can operate and, in effect, this means that there is an exclusion zone in place around schools within which street traders are not allowed to trade. The degree of any condition or restriction is determined by local circumstances and will vary between Local Authorities.

Local Authorities must have a firm basis and rationale for introducing a policy in terms of taking action to encourage healthy eating in the vicinity of schools. This must be informed by, and complement, local and national initiatives and policies to encourage and support healthy eating among this group (children and young people) and the wider community.

Note: Several Local Authorities have prevented snack vans from operating close to schools (North Lanarkshire, East Ayrshire, Glasgow, Renfrewshire, Aberdeen). It is not clear if any of those bans remain in operation given that burger van operators in North Lanarkshire successfully defeated a council ban which stopped them from trading near schools, on the grounds that the Civic Government (Scotland) Act does not allow Local Authorities to restrict street vendor licensing on the basis of the nutritional quality of the food being served.

332 333

Other Food Related Powers

Food (Scotland) Act 2015: Fixed Penalty Notices

Under the Food (Scotland) Act 2015, authorised officers (such as environmental health officers) have the power to issue Fixed Penalty Notices, to someone who they believe has breached a relevant offence, for some food safety offences. The offences have not been defined by the Act or the sum to be collected. The Scottish Ministers will specify the sum of money to be paid as a penalty for the FPNs.^{334 335} FPNs have been viewed as useful given the low levels of prosecution for food related offences, and costs associated with prosecution. Further consultation, and identification of offences, by Food Standards Scotland is ongoing.

The Food Hygiene (Scotland) Regulations 2006

It is a duty for Local Authorities to enforce the regulations. The regulations also provide Local Authority officers with powers to:

- serve Hygiene Improvement Notices where a food business operator is failing to comply with the hygiene regulations;
- serve Hygiene Prohibition Orders, to prohibit a business from trading;
- procure and analyse samples of food; and
- gain entry to premises.³³⁶

The Novel Foods (Scotland) Regulations 2017

These regulations place a duty on Local Authorities to enforce the novel food requirements and they give authorised officers powers of inspection and seizure where food is suspected of not complying with the food law requirements.³³⁷

The Consumer Protection from Unfair Trading Regulations 2008

The regulations aim to protect consumers from unfair or misleading trading practices, and ban misleading omissions and aggressive sales tactics. Local Authorities have a duty to enforce these and they have powers to make test purchases, to enter premises and investigate and seize goods.³³⁸

Food Safety Act 1990

The Food Safety Act 1990, as amended, provides the framework for all food legislation in England, Wales and Scotland. The Act aims to ensure that businesses do not include anything in food, remove anything from food or treat food in any way which means it would be damaging to health, that food businesses serve or sell food of the nature and quality consumers expect and that food is labelled, advertised and presented in a way that is not false or misleading.³³⁹

The Act provides that authorised officers of food authorities can take samples of food and ingredients, enter food premises unannounced to investigate possible offences and inspect food to see if it is safe. Officers may also detain suspect food or seize it.³⁴⁰

3.13. Economic Development, Regeneration and Procurement

Economic Development

Economic development covers a wide range of activities including large-scale inward investment projects, businesses support, employment, skills and training programmes, tourism, environmental and transport projects as well as regeneration; and Local Authorities are key economic players in their own right in the form of major employers and procurers of goods and services etc. (Glasgow City Council guidance states that economic powers are now contained within the power to advance wellbeing in Section 20 of the Local Government in Scotland Act 2003 – and this includes the power to promote economic development e.g. in the form of grants, loans, guarantee or indemnity as part of a financial package, or contributions in cash or kind.)³⁴¹

The historical context has been one of the re-positioning of local government as a key player in economic renewal and regeneration from the late 1990's onwards, with a shift away from the channelling of this work via government agencies, and on to partnership working (e.g. in the form of community planning).³⁴² However the regeneration and economic development landscape has been complex with devolved policy structures across multiple Local Authorities and Local Authority led city and regional deals and partnerships, regeneration companies and other actors.

Economic development is not a statutory responsibility for Local Authorities and will compete for resources, within the context of austerity, although Local Authority activity, in partnership with national bodies and other local institutions and communities, is normally critical to the success of area-based initiatives. Local Authorities can set priorities and pursue activity at local level (e.g. with emphasis on partnership working, reflected in their CPP role, deemed important in planning and co-ordinating improvement to local economies) with other types of activity pursued at a regional level, such as city deals and other regional partnerships, or at national level.^{343 344 345}

City region deals are agreements between the UK and Scottish Governments and Local Authorities to generate long-term strategic approaches to improving regional economies, with Local Authorities able to operate strategically with various public and private sector partners at a regional level. Examples of 'city region deals' include the Glasgow,¹⁴ Aberdeen, Inverness and Highland, Stirling and Clackmannanshire, Edinburgh and South East Scotland and Tay city region deals and a growth deal (the Ayrshire Growth Deal).^{346 347}

¹⁴ For example, the Glasgow deal has included activity such as the regeneration of Sighthill and the Avenues project (including streetscape improvements in various city centre locations) to improve the public realm around the city. See: <https://www.gov.scot/policies/cities-regions/city-region-deals/>

Local Employment

Local Authorities have a number of economic levers at their disposal, including via their role as major employers, asset owners and procurers of goods and services. They are major employers in their own right, and have tended to be viewed as bastions of good practice in providing 'decent work'. There are concerns however that the current economic, social and political climate might be undermining this, although recent research indicates that these principles appear to remain embedded. Local Authorities employ around 233,000 individuals, ranging from 1,283 employees in the Western Isles, to around 19,000 in Glasgow City Council. Employees tend to reside within the same employing Council area, and their employment therefore tends to make a substantial contribution to the total resident employment in their area.

Recent work from the Improvement Service indicates that relatively low paid, part time working is prevalent in many Local Authorities (part time employment status being 50% of headcount or greater in 11 councils, with an average salary of £11.8k), viewed as making a substantial proportion of the workforce potentially vulnerable to changes in welfare reform, particularly for a minority of Local Authorities where a higher share of employees are from the most disadvantaged areas.

For a number of Local Authorities, the level of payroll spend in Scotland's most deprived areas can be very significant, e.g. in Glasgow, reflecting the significant number of staff the Local Authority employs from these areas. However for many Local Authorities the proportion of staff from the most disadvantaged areas is relatively low and therefore addressing poverty in the most disadvantaged areas may be supported by finding new ways for Local Authorities and community planning partners to recruit more staff from their most disadvantaged areas.^{348 349}

Living Wage

The Scottish Living Wage applies to all Scottish Government employees but Local Authorities are independent, autonomous bodies that set their own rates of pay (which have experienced a pay cap since 2013). (Note: From October 1st 2016 the Living Wage, as part of the 2016/17 settlement has been paid to care workers providing direct care and support to adults in care homes, care at home, and housing support.)³⁵⁰

Accredited (with Living Wage Scotland) living wage Local Authorities in Scotland (£9 per hour) include: Aberdeen, Dundee, Edinburgh, Falkirk, East Dunbartonshire, Fife, Inverclyde, South Lanarkshire, North Ayrshire, North Lanarkshire, Midlothian, Stirling, West Lothian, Perth and Kinross, Renfrewshire and Dumfries and Galloway (others may not be accredited but may be paying at least £9 per hour).³⁵¹ Glasgow City Council has applied the 'Glasgow Living Wage' (£8.75 per hour), £9 per hour from 1st April 2019.³⁵²

Increased tax contributions of higher income tax payments and reduced benefits expenditure could recover part of the cost borne by local government of the payment of the living wage. The benefits of a living wage include tackling in work poverty, child poverty and given that wages are also spent locally, would contribute to boosting local economies.³⁵³

Procurement

Local Authority annual procurement spend provides opportunities to promote fair and decent work, local employment, training and environmental sustainability.³⁵⁴

In 2016/17, Local Authorities procured goods and services valued at £7bn, of which around £2bn was local spend, although the share of local spend, on average, has actually decreased by 3%, to 27% between 2008-2017, and this spend has been with a significantly reducing number of local suppliers, likely representing changes in contracting approaches and aggregation in the local supply base. The proportion of local spend as a share of total procurement spend in Local Authorities has varied, e.g. from 12% in West Dunbartonshire, to 46% in the Shetland Isles, with an average share of 27% across all Local Authorities.

As the Improvement Service point out, a key challenge for councils in relation to procurement is in ensuring that the impact of the money they spend, whether locally or outwith the area, is maximised in terms of benefits to the local community or economy.³⁵⁵ (Local spend and how it may benefit local communities is of increasing interest in the UK – see ‘The Preston Model’ below in Box 6.)

In terms of how Local Authorities influence those they contract services and goods from, Local Authorities do have some powers to influence the procurement process around procurement contracts that aim to support / encourage contractor fair work practices and the employment and training of vulnerable or disadvantaged groups. To achieve Best Value (i.e. to secure continuous improvement in performance, balancing quality and cost with regard to economy, efficiency, effectiveness, equal opportunities and sustainable development) when deciding between procurement options, Local Authorities will consider these factors and any wider community benefits.^{356 357}

Recent research indicates that in relation to the procurement process, Local Authorities may wish to see a strengthening of their limited powers around procurement practices i.e. to have influence over external stakeholders, outside Local Authority employment, in their provision of ‘decent work’. However any desire to strengthen these powers might also be undermined by a desire for value for money as a consequence of austerity, thus placing less emphasis on whether contractors provide ‘decent work’.³⁵⁸

Box 6:

The Preston Model - Local spend, and maximising the benefits of that spend locally, is of growing interest (most notably in Preston) with greater emphasis placed on the generation and retention of local wealth. For example, in Preston in 2012/13, of £750m spent on goods and services by six 'Anchor Institutions' (major spenders in the local area including the city and county councils, colleges, university, a housing association and the police), 5% was spent in Preston and 39% in Lancashire as a whole. By 2016/17, of £620m spent on goods and services by the same institutions, 19% was spent in Preston and 81% in Lancashire (the total spend has fallen as a consequence of austerity).

The Preston Model recognises and acknowledges the various EU directives, incorporated into UK law (that do not apply to all contracts) but also makes reference to the use of the Social Value Act (2012) as a means of weighting and scoring contracts to take account of various factors such as attitudes to skills and training and local labour recruitment etc. Preston has been working with EU URBACT and EU partners to develop best practice on procurement that aims to work for local residents and businesses as well as for anchor institutions letting the contracts.^{359 360 361 362 363}

Procurement - Community Benefit

- The Procurement (Scotland) Regulations 2016
- The Public Contracts (Scotland) Regulations 2015
- The Procurement Reform (Scotland) Act 2014

Community Benefit Clauses (CBCs) have been a key strand of procurement policy and practice since 2008. The Procurement Reform (Scotland) Act 2014 expects that where a procuring organisation is to let a contract valued at £4 million or more, it must consider whether to impose CBC requirements. The impetus has come from the public sector, but contractors may also wish to demonstrate wider societal commitments and to deliver on Corporate Social Responsibility agendas.

The Act states that organisations (including Local Authorities) must act in accordance with the sustainable procurement duty and to consider how the procurement process can:

- improve the local economic, social, and environmental wellbeing;
- facilitate the involvement of SME's, third sector bodies and supported businesses; and
- promote innovation.

Within the Act, a community benefit requirement is a contractual requirement imposed by a procuring organisation relating to:

- training and recruitment;
- the availability of sub-contracting opportunities; and
- other activities aimed at improving the local economic, social or environmental wellbeing.

There is no obligation under the Procurement Reform (Scotland) Act 2014 for public bodies to consider applying community benefit requirements in contracts under £4m, but in line with policy and best practice, public bodies are urged to consider the application of CBCs in all contracts irrespective of value.^{364 365 366}

When deciding to apply community benefits, contracting authorities are asked to consider potential opportunities from doing so such as:

- generating employment and training opportunities for priority groups;
- vocational training;
- up-skilling the existing workforce;
- equality and diversity initiatives;
- making sub-contracting opportunities available to SMEs, the 3rd sector and supported businesses;
- supply-chain development activity;
- building capacity in community organisations;
- educational support initiatives;
- working with schools, colleges and universities to offer work experience; and
- minimising negative environmental impacts (e.g. vehicle emissions).

Where community benefits have not been included, the contracting authority must provide a reason for this e.g. they are not considered appropriate, relevant and/or proportionate. Urgency is unlikely to be a suitable reason for not including community benefit requirements.³⁶⁷

Note: Research conducted in 2015 of a snapshot of 24 contracts in Scotland, identified the increasing use of CB clauses, variability in terms of benefits accrued (e.g. recruitment) but also clear evidence of the recruitment and training of individuals from priority groups (e.g. unemployed people) who would, in the main, not have gained access to training or employment without the inclusion of CB clauses. The conclusion drawn is that building awareness of the CB clauses is necessary, as is better evidence capturing about their use.³⁶⁸

The use of CB clauses in public contracts (not solely Local Authorities) has increased, from 81 to 843 between 2015/16 and 2017/18 and benefits have typically revolved around training and qualifications, work placements, job creation and community facilities (improvements in employment conditions were infrequently a benefit).³⁶⁹ At Local Authority level, CB benefits have grown e.g. around job creation (from 78 in 2013/14 to 146 in 2017/18) but as the

Improvement Service indicates, more progress is required in further testing the types of community benefits, including poverty reduction, that Local Authorities could include when determining the benefits to be accrued from contracts.³⁷⁰

Procurement - Supported Businesses / Employment

- The Public Contracts (Scotland) Regulations 2015
- The Procurement Reform (Scotland) Act 2014

The ability for public bodies to restrict participation in tender exercises for supported businesses has been part of national procurement legislation since 2006. The provision within the legislation is referred to as 'Reserved Contracts'. Public bodies are encouraged to use these where appropriate (those with an annual procurement spend of £5m or greater are required to publish an annual procurement report with summary of any steps taken to facilitate the involvement of supported businesses).

Changes introduced by European Directive 2014/24/EU and given effect through the Public Contracts (Scotland) Regulations 2015 means that the criteria to participate in a Reserved Contract tender exercise has been amended to a new two-part test:

- 1) The main aim of the bidding organisation must be to socially and professionally integrate disabled or disadvantaged people
- 2) At least 30% of the employees of the bidding organisation must be disabled or disadvantaged (A bidding organisation meeting both tests is a supported business.)

Note: there is no single authoritative definition of 'disadvantaged'

The Procurement Reform (Scotland) Act 2014 similarly includes a provision allowing public bodies to restrict participation in the tendering process to supported businesses only.^{371 372}

Procurement - Living Wage, Fair and Equal Pay

- Procurement Reform (Scotland) Act 2014

A contracting authority (including Local Authorities) can under Section 9 of the Procurement Reform (Scotland) Act 2014 adopt policies to promote fair work practices in relevant public contracts e.g. fair and equal pay, including the Living Wage, as part of a package of positive fair work practices to be delivered for the duration of the contract. In setting out its general policy, a contracting authority should state measures to promote the payment of the Living Wage in its procurements. In doing so, a contracting authority should consider becoming a Living Wage Accredited Employer and promoting this through relevant public contracts etc.³⁷³

Contracting authorities are unable to make payment of the Living Wage a mandatory requirement as part of a competitive procurement process where the Living Wage is greater than any minimum wage set by or in accordance with the law (National Minimum Wage.)^{374 375}

3.14. Welfare and Financial Inclusion

Local Authorities are responsible for the payment of several grants and benefits, with some flexibility for Local Authorities to determine who will receive a payment, what form they will take (money, or in kind) and how much recipients will receive.

Moreover they seek to support local populations via advice and assistance to e.g. address financial exclusion and increase incomes, either via their services or by channelling support through third sector providers, such as Citizens Advice Bureau.

For example Glasgow City Council have set up Universal Credit Hubs in the city (at a cost of £2m) established across library service venues to support and enable access to this benefit. The council is also linking the birth registration process to entitlement to a range of benefits to then link that information to entitlement for new parents to the Best Start Grant, a package of three payments delivered by Social Security Scotland.^{376 377}

School clothing grants

- Education (Scotland) Act 2016

Scottish Government and COSLA agreed in 2018 that Local Authorities would support some families via financial help towards the cost of buying a school uniform through the payment of a grant. It has been agreed that eligible families will receive at least £100 from all Local Authorities. Who is eligible for the payment will be set by Local Authorities (there will be variation across Scotland) and how much more, if any, they will distribute above the £100 minimum payment.^{378 379} Following gaps in the take up of the clothing grant in Glasgow in the past (around 6,000 eligible families did not claim the grant) the council data matched those in receipt of certain benefits, such as council tax reduction, to ensure payment to all of those who were eligible. Glasgow City Council now pay £110, up from around £50 previously.

Scottish Welfare Fund (SWF)

- The Welfare Funds (Scotland) Act 2015

The Act places a statutory responsibility on Local Authorities to maintain a Welfare Fund. They have extensive discretion over how the scheme is delivered, from taking and processing applications to fulfilment of grants. This is deemed to allow the scheme to be tailored to specific local needs and to make links across services and local organisations. There are two types of grants in the Scottish Welfare Fund (SWF):

- Crisis Grants – to help those with low-incomes in crisis due to a disaster or emergency

- Community Care Grants – to help vulnerable people establish or maintain a home in the community and to help families under exceptional pressure.

This is a duty but Local Authorities have discretion about e.g. what they provide (cash, vouchers, a fuel card, or goods) and how they link the scheme to existing services, but there is an expectation on Local Authorities to work with applicants to identify any other support they may need or be entitled to and signpost them to relevant services, with transparency required around decision making.³⁸⁰ Local Authorities were allocated £33m for Scottish Welfare Fund awards in 2018/19. Around 73% has been spent, with considerable variation in the percentage of the budget spent, e.g. 25% for Eilean Siar and 92% in Dundee City with a number of Local Authorities spending below the Scottish average (South Ayrshire, Shetland Islands, East Ayrshire, West Lothian, Angus, Argyll and Bute, North Lanarkshire, Perth and Kinross, Midlothian, Clackmannanshire, Moray, Falkirk, Highland, Scottish Borders and Aberdeenshire).³⁸¹

Discretionary Housing Payments

- Scotland Act 2016

The Scottish Government became responsible for funding DHP in 2017, from the Department for Work and Pensions. DHP is aimed at those who rent or who are in receipt of either Housing Benefit or an award of Universal Credit which includes an element to meet housing costs. The payment is administered by Local Authorities and they must decide on what basis they award DHPs and how much they will pay. The Scottish Government seeks to mitigate the bedroom tax through DHPs (and so those affected will receive a payment via the DHP). In terms of funding (2018/19), Scottish Government allocated £10.9m to Local Authorities to fund non-bedroom tax DHPs, and expect to spend £50.1m to mitigate the bedroom tax. There is variation in the proportion of estimated 2018/19 DHP funding spent or committed, at 30 September 2018, ranging from 40% (East Renfrewshire) to 120%+ in Stirlingshire.^{382 383}

3.15. Children and Young People

The following are a list of Local Authority powers that relate specifically to children and young people:

Free School Meals (primary years 1 to 3)

- Children and Young People (Scotland) Act 2014

The Act gives the Scottish Government power to require Local Authorities to provide free school meals to children in selected year groups (not solely those in receipt of specific benefits). Food or drink can be provided free of charge at any time of the day. Scottish Government is currently funding Local Authorities to provide free school meals for all children in primary 1 to 3 in Local Authority schools across Scotland. This extends the previous policy of offering free school meals only to children and young people, aged 5 to 18, whose families are on low incomes and/or in receipt of certain qualifying benefits.^{384 385}

Free School Meals

- Education (Scotland) Act 2016

The education authority must provide or secure the provision of a school lunch, free of charge, to pupils where the pupil or their parents are in receipt of (i) income support, (ii) an income-based jobseeker's allowance, (iii) an income-related allowance under the Welfare Reform Act 2007 or the (b) the parents of the pupil are in receipt of support provided under Part 6 of the Immigration and Asylum Act 1999.

The authority may also provide or secure the provision of (a) other food or drink to these pupils or (b) food or drink to other pupils. The authority may do so free of charge or charge pupils. The authority may exercise this power to provide or secure the provision of food or drink free of charge (a) in relation to pupils who satisfy such conditions as the authority thinks fit (b) at such times of the day as the authority thinks fit.³⁸⁶

Authorities can use their discretion to provide school meals to those outwith the groups identified above (on low incomes and/or in receipt of certain qualifying benefits) and to provide school meals outside term-time e.g. for all primary 4 pupils (Glasgow City Council³⁸⁷) and during school holidays for those entitled to free school meals (North Lanarkshire Council).³⁸⁸

School Snacks

- Schools (Health Promotion and Nutrition) Scotland Act 2007

The Act imposes duties on the Scottish Ministers, education authorities and managers of grant-aided schools to endeavour to ensure that public schools

and grant-aided schools are health-promoting. The Act also provides education authorities with the power to provide pupils with snacks, either free of charge or subject to a charge.³⁸⁹

School Transport

- Education (Scotland) Act 1980 (Section 51)

Under Section 51 of the Education (Scotland) Act 1980, as amended, education authorities are required to make such arrangements as they consider necessary for the provision of school transport e.g. where the school is not within 'walking distance' - in general free travel is available to pupils who live outwith the statutory walking distance, defined in section 42(4) of the 1980 Act as being 2 miles for any pupil under the age of 8 and 3 miles for any other pupil (among a number of other reasons for providing free transport).

These arrangements are determined by each Local Authority, there is variability in the level of provision, and they may use their discretionary powers to provide transport where they wish to do so. Parental income is not a consideration in the provision of free school transport.^{390 391 392}

Early Learning and Childcare (ELC)

The Scottish Government provides funding to Local Authorities for the delivery and implementation of funded ELC. Funded ELC is commonly understood as the number of 'free' hours of childcare a child is entitled to. Currently, all 3 and 4 year olds and eligible 2 year olds are entitled to 600 hours a year of funded ELC, usually taken as 16 hours a week, over 38 weeks. This will increase to 1,140 hours per year in 2020.

School deferral

- Education (Scotland) Act 1980 Act (Section 1(1C))

Children born in September to December can start school at either 4 years and 8 to 11 months in the August term before their 5th birthday; or, at 5 years and 8 – 11 months the August term following their birthday. However, if their parent(s) or carers choose to defer starting to the August following their 5th birthday, they are not entitled to an additional year of ELC.

Therefore, for all children whose 5th birthday falls in September to December, the education authority is not under a duty to provide ELC following the term that the child can start school. However, the education authority has discretionary power under section 1(1C) of the Education (Scotland) Act 1980 Act to provide additional ELC to any child. This would be based on an assessment of wellbeing.³⁹³

Provision of ELC Prior to Age Three

- Provision of Early Learning and Childcare (Specified Children) (Scotland) Order 2014

The Order provides that children are eligible for funded ELC from the first term after their third birthday, unless the child's birthday falls in August (when they will be eligible from the autumn term). Local Authorities are not legally required to provide funded ELC as soon as a child turns three, only from the term commencing after their birthday. However, Local Authorities can use their discretion to provide funded ELC earlier than that first term.

Entitlement to Funded ELC for Some Two Year Olds

- Children and Young People (Scotland) Act 2014

Looked after two-year olds, including those subject to a kinship care order or with an appointed guardian are eligible for funded ELC, as are those two-year olds whose parents are in receipt of certain benefits. About 10% of all two-year-olds have been registered for funded ELC although around 27% are eligible. Local Authorities do not have a statutory duty to identify eligible two-year-olds and their parents, but they should promote the entitlement locally.^{394 395}

Additional Support

- Education (Additional Support for Learning) Scotland Act 2004 (as amended)

The Act gives education authorities the power to help children and young people belonging to their area who have or may have additional support needs and for whose school education they are not responsible. Those who may be supported include children and young people sent to independent schools by their parents and those being educated at home. Support can include e.g. the provision of learning and teaching support, resources or advice.³⁹⁶

Sunbeds

- Regulation of Provision of Sunbeds - Public Health Act 2008

Section 102 of the Act provides authorised officers of the Local Authority power to inspect premises (including dwelling houses) in order to ascertain whether or not an offence under section 95, 96, 98, 100 or 101 of the Act has been or is being committed.

- 95: Prohibition on allowing use of sunbeds by persons under 18
- 96: Prohibition on sale or hire of sunbeds to persons under 18
- 98: Prohibition on allowing unsupervised use of sunbeds
- 100: Duty to provide information to sunbed users
- 101: Duty to display information notice.

Section 205 of the Act enables the Local Authority officer to issue a Fixed Penalty Notice (£100 for an offence under section 95 (allowing use of sunbeds by persons under 18) and £50 for an offence under section 98, 100 or 101) to the operator of the premises where the officer has reason to believe an offence has taken place under section 95, 98, 100 or 101.³⁹⁷

Post Looked After Young People

- Children and Young People (Scotland) Act 2014
- Children (Scotland) Act 1995

Local Authorities have a duty to provide aftercare support to all compulsorily supported persons for whom they are the relevant authority. A compulsorily supported young person is one who has ceased to be looked after on or after their 16th birthday but who is under 19 to whom a Local Authority has a duty under section 29(1) of the Children (Scotland) Act 1995 Act to provide advice, guidance and assistance.

Local Authorities also have the power under section 29(5A)(b) of the 1995 Act, regardless of the outcomes of a pathway assessment, to provide Aftercare (advice, guidance and assistance) to those care leavers aged 19-26 having regard to the person's welfare. Scottish Government expects that Local Authorities should always consider employing this power.

Section 66(3) of the Children and Young People (Scotland) Act 2014 amends Section 30 of the 1995 Act, which sets out when a Local Authority may give financial assistance towards the education or training expenses of young people who have ceased to be looked after. From April 2015 the upper age to which this financial support can be requested is up to the age of 26.

The Scottish Government states that Section 30 payments should always be considered for care leavers irrespective of age and the type of care placement they have previously been provided with. Section 30 of the 1995 Act (as amended by section 66 of the 2014 Act) sets out when Local Authorities may give financial assistance towards expenses of education or training to those who have left care:

- A Local Authority may make grants to young people in their area to enable them to meet expenses connected with relevant education or training (if over 16 but not yet 26 and were on their 16th birthday or at any subsequent time, but are no longer looked after by a Local Authority).
- A Local Authority may make contributions toward the living expenses (accommodation and maintenance) of a young person near to where they are employed, or seeking employment, or receiving education or training.³⁹⁸

Parenting Orders / ASBO

- Antisocial Behaviour (Scotland) Act 2004

Local Authorities have the power to apply to a Sheriff for a parenting order under the Antisocial Behaviour (Scotland) Act 2004. These orders are for one year, and require parents to participate in programmes designed to improve their parenting by receiving support from services which they had previously refused and for their compliance to be monitored by a named officer. Local Authorities must consult with other agencies in a multi-agency planning process, and consult with the reporter to the children's panel, before considering with its legal advisors whether an application for a parenting order should be made.

They may also apply for an ASBO under the Act 2004. Non-attendance at school is not anti-social behaviour in itself, but while a young person is not at school, their activities may include anti-social behaviour. Improving school attendance may be made a condition of an ASBO, and services are expected to ensure that the conditions applied enhance the potential for a young person to be engaged in learning, whether in school or in the community.³⁹⁹

3.16. Carers

- Carers (Scotland) Act 2016

The Carers (Scotland) Act 2016 is designed to support carers' health and wellbeing and help make caring more sustainable. The measures from 1 April, 2018 include a duty for Local Authorities to provide support to carers, based on the carer's identified needs which meet the local eligibility criteria.⁴⁰⁰

The responsible Local Authority—

- (a) must provide support to the carer to meet the carer's eligible needs, and
- (b) may provide support to the carer to meet the carer's other identified needs⁴⁰¹

Local Authorities have a discretionary power to provide support to meet the carer's other identified needs (those which cannot be met through support to the cared-for person, or services available generally, but which do not meet the threshold for support set by the eligibility criteria.⁴⁰²

3.17. Miscellaneous

Smoke Control Areas

- The Clean Air Act (1993) (Section 18)

Local Authorities have the power to designate the whole area of the authority, or part of the area, a Smoke Control Area under section 18 of the Clean Air Act 1993. It is an offence therefore to produce smoke from a chimney of a building, fixed boiler or industrial plant, unless the fuel burned or appliance used is authorised. The Local Authority has the power to require adaptation of fireplaces in private dwellings where a Smoke Control Order is in force.^{403 404}

Public Toilets

- Public Health Act 1936 (Section 87)

No statutory duty is placed on Local Authorities to provide public toilets but they have powers to do so. In light of recent closures of public toilets, provision might now extend to providing access to toilets within council buildings or via setting up schemes such as the 'Community Toilet Scheme' to encourage local businesses to provide access to toilets, in return for a small payment from the Local Authority.^{405 406}

Parades and Processions

- Civic Government (Scotland) Act 1982

Under the Civic Government (Scotland) Act 1982, organisers of processions are required to notify a Local Authority of their intention to process. The Local Authority may agree to the parade or procession as the organiser intended, attach conditions to the holding of the parade or procession such as changes to the proposed route or start time, or under very limited circumstances, prohibit the parade or procession.

Local Authorities can consider a range of issues to support decisions around allowing or preventing a procession or to place conditions on it. They must consider the effect of holding the procession on public safety and order, damage to property, disruption to the life of the community and the potential burden on the police before deciding whether to restrict a procession.⁴⁰⁷

In dealing with a procession notification Local Authorities must also recognise the fundamental rights contained within the European Convention on Human Rights in relation to freedom of assembly and of association. As a public authority, Local Authorities must act within current European and domestic legislation and balance the rights of individuals and groups to hold processions, with the rights of others to go about their business without unnecessary disruption. Local Authorities are required to examine all factors before deciding

whether it would be appropriate to place conditions on a procession, or prevent it from taking place, and any decision must be proportionate taking account of the aim it is trying to tackle, all in accordance with the legislation.

Control of Dogs

- Control of Dogs (Scotland) Act 2010

Local authorities have a responsibility for dealing with stray dogs and may seize and detain any dog believed to be a stray. Under the Act a Local Authority has a duty to appoint an officer who is skilled in the control of dogs and has the capacity to instruct and advise others in matters relating to the control of dogs. Local Authorities have the power to issue dog control notices when a dog has been out of control.⁴⁰⁸

Community Councils

- Local Government (Scotland) Act 1973

Local Authorities may make such contributions as they think fit towards the expenses of community councils within their areas, may make loans to those councils and may, at the request of such community councils, provide them with staff, services, accommodation, furniture, vehicles and equipment, on such terms as to payment or otherwise as may be agreed between the councils concerned.⁴⁰⁹

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