

Statutory Powers and Duties of the Council

City of Edinburgh Council

3 February 2011

1 Purpose of report

This report is a response to the Council Motion approved on 18 November 2010, instructing the Chief Executive to bring forward a report within two cycles identifying:

- i) those services the Council is obliged to deliver as a matter of statutory duty together with the relevant statutory reference; and
- ii) those services the Council currently delivers which are not a statutory duty.

2 Summary

- 2.1 The overall nature of legislation that governs the work of local government in Scotland is identified, with a high level summary of the main legislation which permits or requires the delivery of services, strategic planning or regulatory functions. The main services which are statutory are defined, but detailed and further research would be required to classify services in the manner sought by the motion.

3 Main report

Background

- 3.1 The powers and duties of local authorities are directly conferred upon them by the Acts of the Westminster Parliament and delegated legislation of the Scottish Parliament (since 1999). This is manifest in the form of Parliamentary Acts and Statutory Instruments.
- 3.2 Local authorities may only incur expenditure and provide services within this statutory framework. Should a local authority provide services outside these current statutes it would be acting 'ultra vires,' i.e. beyond its powers, and could be subject to legal challenge in the courts. As a result all council services, actions and decisions must come within the bounds of one or more legislative power.

- 3.3 In addition to legislative instruments there may be mandatory guidance from government for certain policy approaches, such as 'Best Value' prior to the Local Government Scotland Act 2003, and also mechanisms such as the Single Outcome Agreement which tie funding into the delivery of specific policy approaches or outcomes.
- 3.4 The powers and duties designated by statute can be divided into three broad categories. It should be noted that councils can meet a statutory duty in a variety of ways, and that level and type of service investment is for local decision and interpretation.
- Mandatory – services which must be provided, e.g. education for school age children;
 - Permissive – services which may be provided e.g. economic development; and
 - Discretionary – where there is a power to spend a limited amount of money which will bring direct benefit to the council area.
- 3.5 The core current legislative framework for local government is listed below:
- Local Government (Scotland) Act 1973;
 - Civic Government (Scotland) Act 1982;
 - Local Government and Housing Act 1989;
 - Local Government Finance Act 1992;
 - Local Government etc (Scotland) Act 1994; and
 - Local Government in Scotland Act 2003.
- 3.6 The 2003 Act introduced the duty to secure 'Best Value', a duty of community planning as well as the power to advance the wellbeing of a Council's area or persons. The latter is a power of general competence allowing local government to do anything for the benefit of its area that is not expressly prohibited, or otherwise prohibited, in statute.
- 3.7 Local government powers and duties to provide particular services such as education and social work are contained in separate legislation. Local government is also increasingly subject to European Union Law and, as a significant employer, is subject to general legislation on employment.

Detailed Statutory Duties

- 3.8 There are hundreds of specific services provided by local government in Scotland. These fall under the general headings of education, social work, economic development, planning, leisure and recreation, housing, environmental and regulatory services.
- 3.9 In addition, councils have powers and duties to provide longer term planning frameworks for both internal functions and to influence external partners – e.g. land-use planning, community planning, health and well being, community safety.

- 3.10 Finally, councils have regulatory functions such as the granting of licenses, (e.g. taxi and public houses) byelaws, registration (e.g. births, marriages, deaths, landlords) and inspection functions (e.g. trading standards and environmental health).
- 3.11 For each specific service, regulation and strategic planning function there will be at least one power in statute and often very detailed and specific duties. There is no published list of all relevant legislation tied to local government services, planning or regulatory functions.

Council Prioritisation Exercise 2009-10

- 3.12 As part of the first service prioritisation exercise associated with the budget setting process, all departments were asked to consider the statutory basis of all service activity. The work provided details for 470 service areas within the Council. Although incomplete in some aspects, around 90 service areas were not clearly linked to statutory duties, although a proportion provide key support functions for these duties. In 170 cases the prescribed statutory nature of the service to be provided was defined. The work also revealed the statutory obligation to provide a service to clients meeting certain criteria in 200 service settings.
- 3.13 The areas which are specifically prescribed in legislation and are therefore mandatory relate to many elements of education, social work and regulatory functions. The functions which must be provided if the client meets certain criteria tend to be in social work and education service areas, but are also evident in regulatory services such as planning.
- 3.14 The analysis does not allow the identification of specific service activity which is not the subject of a duty. Further research and significant resources would be needed to meet the terms of the motion in detail.

4 Financial Implications

- 4.1 There are no direct financial implications to this report.

5 Environmental Impact

- 5.1 There are no direct environmental implications to this report.

6 Conclusions

- 6.1 There is no published list of all local government legislation, powers and duties in Scotland. The exercise above provides some insight into the main statutory provisions which govern the work of the Council, linked to the service areas. Those most likely to be mandatory in nature are school education, social work and regulatory functions. However it should also be noted that a number of support functions, not specifically detailed in statute are in place in order to ensure that the Council complies with legislation as a corporate body, for example, legislation related to employment, equalities, information and data.

7 Recommendations

7.1 It is recommended that Council:

- i) notes this report and its findings; and
- ii) determines whether or not further research is appropriate to meet the detailed terms of the motion.

Jim Inch
Director of Corporate Services

Appendices

Contact/tel/Email Email: david.jack@edinburgh.gov.uk

Wards affected None

Single Outcome Agreement Outcome 15

Background Papers