

PUBLIC FINANCE AND ACCOUNTABILITY (SCOTLAND) ACT 2000

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Executive in order to assist the reader of the Public Finance and Accountability (Scotland) Act 2000 (asp 1), which received Royal Assent on 17 January 2000. They do not form part of the Act and have not been endorsed by the Parliament.
2. The Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE ACT

Section 1: Use of Resources

General Purpose

3. This section, together with sections 2 and 3, paves the way for the introduction of resource budgeting and accounting. This is a system whereby expenditure is authorised and accounted for on an accruals basis. Accruals accounting links the accounting for resources to when the resources are actually consumed. For example goods and services are accounted for, and thus count against a resource budget, when they are used, not when they are paid for. Capital assets are accounted for over the life of the asset, and the budget will carry annual charges reflecting the financing and opportunity costs of the asset.
4. Not all resource ‘spending’ has implications for the actual handing over of cash in the same year; and not all cash spending will count against a resource budget in that year. Taken together with section 4, however, this section means that spending can only take place if it is within both the approved resource budget and an overall cash authorisation.
5. The Executive intends to introduce resource budgeting as soon as possible; but initially will present budgets in the traditional ‘cash’ way.

Subsection (1)

6. This subsection is intended to limit the “use of resources”. It ensures that the use of resources by the Scottish Administration and other direct funded bodies must be authorised on an annual basis by a Budget Act. The Budget Act may specify the purpose for which the resources may be used and/or the maximum amount of resources that may be used in the particular financial year to which the Budget Act relates.
7. The other direct funded bodies are those whose expenditure is, by virtue of statutory provision, payable out of the Scottish Consolidated Fund i.e.-

- (a) the Scottish Parliamentary Corporate Body (SPCB), whose expenses are payable out of the Fund under 21(6) of the Scotland Act 1998,
- (b) Audit Scotland (established by section 10 of the Act), whose expenditure, so far as not met out of charges income, will be payable out of the Fund under section 11(7) of the Act,
- (c) the Forestry Commissioners, whose expenditure as regards Scotland is payable out of the Fund under section 41(4) of the Forestry Act 1967, as amended by the Scotland Act 1998 (Cross-Border Public Authorities) (Adaptation of Functions etc) Order 1999 (S.I. 1999/1747), and
- (d) any other body or office-holder where statutory provision is made for its expenditure to be “payable out of the Scottish Consolidated Fund” (the Food Standards Act 1999 (c.28) would provide for expenditure of the proposed Food Standards Agency to be payable out of the Fund).

Subsection (2)

- 8. This requires separate authorisation for expenditure supported directly from the Scottish Consolidated Fund and for expenditure supported by “accruing resources”.

Subsection (3)

- 9. This defines the term “use of resources”. For the purposes of the Act, use of resources means, spending or consuming or reducing the value of resources.

Section 2: Emergency Arrangements

General Purpose

- 10. This section makes provision for temporary arrangements for authorising the use of resources in any financial year where a Budget Act has not been agreed by the start of that financial year. This is to enable the Scottish Administration and other bodies dependent on funding derived from the Scottish Consolidated Fund to continue to provide services on an interim basis until a Budget Act can be enacted. Parallel provisions for the use of cash will be included in Budget Acts.

Subsection (1)

- 11. Subsection (1) explains that if a Budget Act has not been agreed before the start of a financial year, then resources (including accruing resources) may be used in accordance with the rules set out in subsections (2) and (3).

Subsection (2)

- 12. Subsection (2)(a) states that resources used in the current financial year may only be used for the same purposes as authorised in the previous year’s Budget Act. Subsection (2)(b) limits the amount of resources that may be used. It states that for each month in the current financial year that resources are used under this procedure, the amount of resources used may not exceed whichever is the greater of:
 - (a) one-twelfth of any amount authorised for the previous financial year, or
 - (b) the amount used for that purpose in the equivalent month in the previous financial year.

Subsection (3)

- 13. This in effect provides that resources must be used in accordance with the Budget Act for the financial year in question when it is enacted.

Section 3: Contingencies

General Purpose

14. This section sets out contingency arrangements to allow for the use of resources in certain circumstances where the proposed use of resources has not been authorised by a Budget Act. Parallel provisions on cash will be made in Budget Acts. This is intended to cover instances where there is an urgent need, but no time to seek Parliamentary approval. All use of the power must be reported to the Parliament.

Subsection (1)

15. This explains that this section applies where the Scottish Administration or any other direct funded body proposes to use resources in any financial year without the authority of a Budget Act relating to that year.

Subsection (2)

16. This subsection ensures that the use of resources under these contingency arrangements must have the authority of the Scottish Ministers.

Subsection (3)

17. This subsection sets out the circumstances in which Scottish Ministers may authorise the use of resources where there is no Budget Act authority. These are where:
- (a) Scottish Ministers consider the use of resources is necessary in the public interest; and
 - (b) resources are required so urgently that Budget Act authority could not be obtained in time.

Subsection (4)

18. This limits the total amount of the resources which the Scottish Ministers may authorise under this section in any financial year to no more than 0.5% of the aggregate amount of resources authorised at the beginning of the year by Budget Act to be used in that year.

Subsection (5)

19. This ensures that where the use of resources is authorised under this section, the Scottish Ministers are required, as soon as possible, to lay before the Parliament a report setting out the reasons for using these contingency arrangements.

Section 4: Payments Out of the Scottish Consolidated Fund

General purpose

20. This section, and sections 5 and 6, set out the rules for payment of sums out of the Scottish Consolidated Fund which are contemplated by section 65(1)(c) of the Scotland Act 1998. They are intended to give effect to an annual budget process for each financial year culminating in a Budget Act.

Subsection (1)

21. This ensures that payments from the Scottish Consolidated Fund to meet the expenditure of the Scottish Administration or of the other direct funded bodies may be made only in accordance with the rules set out in this section and in sections 5 and 6 of the Act.

Subsection (2)

22. This subsection ensures that any sum paid out of the Fund is within the “overall cash authorisation” defined in subsection (4) (approved by the Scottish Parliament in a Budget Act) for the financial year in which it is to be paid.

Subsection (3)

23. This subsection ensures that any payment from the Scottish Consolidated Fund is for a use of resources authorised by a Budget Act for that financial year under sections 1 to 3.

Subsection (4)

24. This defines the term “overall cash authorisation” for a given financial year. For the purposes of the Act, this term means the maximum amount that may be paid from the Fund in that year. The amount is set in the Budget Act for the year.

Subsection (5)

25. This allows for a Budget Act to make separate overall cash authorisations for the Scottish Administration and each of the other direct funded bodies.

Section 5: Credits for Payments Out of the Fund

General purpose

26. This section, as well as being part of the rules for payment of sums out of the Scottish Consolidated Fund, also makes the provision required by section 70(2)(a) of the Scotland Act.

Subsection (1)

27. This ensures that payments from the Scottish Consolidated Fund can only be made in accordance with a credit granted on the Fund by the Auditor General for Scotland. A credit in this context means a written authority.

Subsection (2)

28. This subsection is to ensure that credits are only granted by the Auditor General at the request of the Scottish Ministers.

Subsection (3)

29. This subsection prevents the Auditor General from granting a credit where he/she considers that the proposed payment from the Fund would not comply with sections 65(1) and (2) of the Scotland Act 1998. Those provisions set out the circumstances under which payments may be made from the Scottish Consolidated Fund.

Subsection (4)

30. This provision means that a credit does not need to be granted by the Auditor General in respect of repayments from the Fund made in accordance with section 6.

Section 6: Repayments from the Fund

31. This section allows for repayments from the Scottish Consolidated Fund. If a body or office holder pays a sum into the Fund and it is then established that payment into the Fund need not have taken place, then the sum may be repaid to the body or office holder concerned. Any repayment must be approved by the Auditor General for Scotland but the Auditor General need not issue a formal credit for the repayment.

32. The purpose of this section is purely to allow the correction of errors and to avoid an incentive for bodies to hang on to money due to the Fund in case of error. Without such a provision the only way to obtain repayment would be for a further authorisation under a Budget Act.

Section 7: Application of Receipts

33. This section applies to receipts of the Scottish Administration and other direct funded bodies received in connection with accruing resources whose use was authorised in the same or any earlier financial year. Such receipts may be used in the same financial year in connection with any authorised use of resources instead of being paid into the Scottish Consolidated Fund.

Section 9: Keeper of the Registers of Scotland: Financial Arrangements

General Purpose

34. The purpose of this section is to put in place financial arrangements for the Registers of Scotland (the Department of the Keeper of the Registers of Scotland) having broadly the same effect as the Trading Fund arrangements under which it currently operates. The Registers of Scotland Executive Agency Trading Fund was established in 1996 by an Order under the Government Trading Funds Act 1973 (the Register of Scotland Executive Agency Trading Fund Order 1996 (S.I. 1996/1004)). The Trading Fund is continued in existence until 31 March 2000 by transitional provisions put in place under the Scotland Act (see article 22 of the Scotland Act 1998 (Transitory and Transitional Provisions)(Finance) Order 1999 (S.I. 1999/441)). Under the arrangements in this section the Keeper will be authorised to keep and apply the income from fees (although the level of the fees will be controlled by the Scottish Ministers under existing legislation). The Scottish Ministers will be able to supply capital to the Keeper, either by loan or by the issue of public dividend capital (broadly equivalent to equity finance). The Keeper will be put under a financial duty by the Scottish Ministers (currently a 6% return on net assets).

Subsection (1)

35. This ensures that the Keeper of the Registers of Scotland is able to retain certain sums of money paid to him and use these to meet his expenditure. He is able to retain money that is paid to him in respect of the exercise of any of his functions.

Subsection (2)

36. This enables the Scottish Ministers to issue public dividend capital to the Keeper.

Subsection (3)

37. This enables public dividend capital deemed to have been issued to the Registers of Scotland Executive Agency Trading Fund in terms of the Government Trading Funds Act 1973 to be treated as if it had been issued by the Scottish Ministers under this Act. This provision is to ensure that the same treatment is applied to sums of public dividend capital deemed, before commencement of this Act, to have been issued to the Trading Fund under the existing arrangements and those issued under the Act after this Act comes into force.

Subsection (4)

38. This provision requires the Keeper to make payments into the Scottish Consolidated Fund of any sums the Scottish Ministers may determine as appropriate by way of a return of the public dividend capital issued or deemed to have been issued to the Keeper by the Scottish Ministers under the Act. It also requires the Keeper to pay into the Scottish Consolidated Fund principal repayments or interest in respect of sums deemed

to have been issued to the Registers of Scotland Executive Agency Trading Fund when the Fund was established. The outstanding liabilities, as at 1 July 1999, of the Trading Fund in respect of these sums were transferred to the Scottish Ministers on that date by virtue of the Scotland Act 1998 (Transfer of Borrowing of the Registers of Scotland Executive Agency Trading Fund) Order 1999 (S.I. 1999/1596). The Scottish Ministers are required to repay these liabilities to the National Loans Fund by virtue of that Order and section 71(6) of the Scotland Act. This provision enables this outstanding debt to continue to be serviced as part of the Registers of Scotland's expenditure.

Subsection (5)

39. This enables the Scottish Ministers to lend money to the Keeper on terms and conditions defined by them.

Subsection (6)

40. This ensures that interest charged on a loan under subsection (5) is not less than the lowest rate of lending from the National Loans Fund that applies on the day the loan is made. This replicates provision set out in section 68(1) of the Scotland Act 1998.

Subsection (7)

41. This subsection requires the Keeper to pay to the Scottish Ministers certain sums that relate to the liabilities of the Scottish Ministers. The sums concerned are payments made by the Scottish Ministers in terms of section 51 of the Scotland Act 1998 in relation to the Keeper himself and to members of staff of the Scottish Administration who have been assigned to assist the Keeper. These sums include salary, allowances and contributions to pensions schemes.

Subsection (8)

42. This provision enables the Scottish Ministers to specify the financial objectives the Keeper must achieve in exercising his functions.

Subsection (9)

43. This requires that financial objectives should be determined so as to ensure that the sums received by the Keeper are sufficient to meet his expenditure, taking one year with another. The provision is intended to allow for payments and expenditure in any single financial year not to be equal, but for them to be broadly equal over a period of years.

Subsection (10)

44. This makes clear that expenditure in this section means expenditure by the Keeper in exercise of his functions and that it includes payments he is required to make under this section. This is the expenditure which the Keeper will be required to meet out of his income.

Subsection (11)

45. In view of the detailed financial arrangements for the Keeper of the Registers of Scotland put in place by section 9(1) to (10), this subsection ensures that the general provisions of Part 1 of the Act (with the exception of section 6) do not apply to the use of resources by, and the cash expenditure and receipts of, the Keeper.

Section 10: Audit Scotland

General Purpose

46. This section makes provision for the establishment of a new public sector audit service which is to be known as Audit Scotland. Audit Scotland is to be a body corporate whose functions are to provide the administrative support and services, etc that the Auditor General for Scotland and the Accounts Commission for Scotland require for the carrying out of their own (statutory) functions. The more detailed arrangements necessitated by the establishment of this new body are at schedule 2.

Subsection (1)

47. This states that a body corporate known as “Audit Scotland” will be established, exercising the functions outlined in this Act, or conferred on Audit Scotland by other enactments.

Subsection (2)

48. This subsection sets out the membership of Audit Scotland. Audit Scotland will consist of the Auditor General, the Chairman of the Accounts Commission for Scotland plus 3 other persons appointed jointly by the Auditor General and the Chairman of the Accounts Commission.

Subsection (3)

49. This subsection sets out Audit Scotland’s main function. It provides that Audit Scotland is to provide any assistance and support required by the Auditor General and the Accounts Commission in the course of their respective functions. Such assistance is to include providing or arranging the provision of the property, staff and services that the Accounts Commission or the Auditor General for Scotland may need in order to be able to carry out their respective functions.

Subsection (4)

50. This allows the Auditor General for Scotland and Accounts Commission to give Audit Scotland directions relating to their own respective functions. By virtue of section 27(4) such directions must be given in writing and may be varied and revoked.

Subsection (5)

51. This allows Audit Scotland to provide audit services to any public body or office holder.

Subsection (6)

52. This subsection brings into effect schedule 2 to this Act, which makes further provision about Audit Scotland.

Section 11: Audit Scotland: Financial Provisions

Subsection (1)

53. These provisions enable Audit Scotland to make reasonable charges in respect of the following circumstances:
- (a) services provided by Audit Scotland on a voluntary basis to or in respect of another public body or office-holder (see section 10(5)).
 - (b) audits of and reports on accounts required to be undertaken under the Act under the control of the Auditor General (sections 21 and 22), other than audits of

the accounts of the Scottish Administration and any other direct funded bodies (sections 19(1) to 19(3)) or audits of consolidated public accounts (section 20).

- (c) economy, efficiency and effectiveness examinations carried out under the Act under the control of the Auditor General (section 23), other than examinations in respect of office holders in the Scottish Administration or any other direct funded body.
- (d) audits of accounts in pursuance of Part VII of the Local Government (Scotland) Act 1973, which mainly deals with the audit of local authority accounts under the control of the Accounts Commission.
- (e) studies undertaken under sections 97A or 105A of the 1973 Act, which mainly concerns studies in relation to local authorities under the control of the Accounts Commission.
- (f) work undertaken on behalf of the Accounts Commission under section 1 of the Local Government Act 1992. This concerns the giving of directions requiring local authorities and other relevant bodies to publish performance standards relating to their activities in any financial year.

Subsection (2)

54. This provides that charges may be set on a case by case basis or may be set in relation to particular classes of case.

Subsection (3)

55. This provision requires Audit Scotland to ensure that the charges received by them under subsection (1) are broadly equivalent to the expenditure incurred by them in connection with the activities in respect of which the charges are imposed, taking one year with another. The provision is intended to ensure that excessive charges cannot be levied, and equally that sufficient funds are received to cover costs. But it also recognises that income and expenditure in any single financial year may not be precisely equal, by allowing for income and expenditure to be considered over a period of years.

Subsection (4)

56. This directs that charges are payable by the body or office holder whose accounts are being audited, or in respect of whom an examination or study is carried out or a direction given.

Subsection (5)

57. This provides that where an examination or study is carried out that involves more than one body or office holder, Audit Scotland shall determine what proportion of the charge each body should pay. This may be the case in respect of some studies carried out under the control of the Accounts Commission in relation to local authorities.

Subsection (6)

58. This ensures that charges received by Audit Scotland are retained and used to meet the expenditure incurred by it in connection with the activities for which the charges are imposed.

Subsection (7)

59. This ensures that any other sums received by Audit Scotland are to be paid into the Fund, unless any enactment (including the Public Finance and Accountability (Scotland) Act itself) authorises such sums to be applied for another purpose, such as meeting expenses incurred by Audit Scotland.

Subsection (8)

60. This provides that any expenditure of Audit Scotland which is not met by charges is payable from the Scottish Consolidated Fund. In general terms, this covers expenditure on audits and studies in relation to the accounts of the Scottish Administration and the other direct funded bodies.

Subsection (9)

61. This subsection requires Audit Scotland to prepare proposals for its use of resources and expenditure for each financial year and submit these to the Scottish Commission for Public Audit, which is constituted under section 12, which is required to examine the proposals and report on them to the Parliament.

Section 12: Scottish Commission for Public Audit

General Purpose

62. This section establishes the Scottish Commission for Public Audit which is to: examine the proposed budget of Audit Scotland (section 11(9)); appoint the auditors of Audit Scotland (section 25(1)); initiate value for money examinations into Audit Scotland (section 25(4)); consider the audit and value for money reports and ensure such reports are both laid before the Parliament and published (section 25(6)). Detailed arrangements for the management of the Commission are at schedule 3 to the Act.

Subsection (1)

63. This subsection establishes the Scottish Commission for Public Audit and provides for it to have the functions conferred on it by the Act.

Subsection (2)

64. This states that the Commission will comprise the convenor of the Audit Committee and 4 other members of the Parliament appointed in accordance with standing orders.

Subsection (3)

65. This gives the Commission the powers to require Audit Scotland to provide it with the information it needs.

Subsection (4)

66. This subsection requires the Commission to report periodically to the Scottish Parliament.

Subsection (5)

67. This subsection gives effect to the detailed arrangements set out in schedule 3.

Section 13: Auditor General for Scotland

General Purpose

68. The office of Auditor General for Scotland was established in section 69 of the Scotland Act 1998. This section makes provision for payment of the Auditor General for Scotland's salary, pension and expenses. It also makes provision in connection with the discharge of his functions.

Subsection (1)

69. This provides that the salary and allowances of the Auditor General are to be determined by, the Scottish Parliamentary Corporate Body (the SPCB).

Subsections (2) to (4)

70. These provisions are to ensure that Audit Scotland pay the salary and allowances of, and any expenses incurred by, the Auditor General and make arrangements for the post to be pensionable. Provision is included for Audit Scotland to contribute to a pension scheme or to establish and administer one, as well as to make arrangements for pension and related payments to be made to any person who has ceased to hold the position of Auditor General.

Subsection (5)

71. This subsection makes provision for the resignation and retirement of the Auditor General and for the SPCB to set the other terms and conditions of the appointment.

Subsections (6) to (8)

72. These subsections make provision as to the extent to which the Auditor General can delegate his/her functions. The functions under sections 21(4) and 23(8) must be performed by the Auditor General personally except when he is incapable on medical or other grounds. Subsection (8) ensures that the Auditor General remains ultimately responsible for his functions even though he may delegate these.

Subsections (9) to (11)

73. These provisions deal with temporary vacancies in the office of Auditor General, thereby enabling the public audit service to continue functioning under a person appointed by the Scottish Commission for Public Audit on a temporary basis until a new Auditor General can be appointed.

Section 14: Principal Accountable Officer for the Scottish Administration

General Purpose

74. This section provides for the most senior official of the Scottish Administration is to be its principal accountable officer and sets out his/her functions. Together with section 15, it makes the provision required by section 70(1)(e) of the Scotland Act 1998.

Subsection (1)

75. This sets out that the principal accountable officer of the Scottish Administration its most senior member of staff.

Subsection (2)

76. This subsection ensures that the principal accountable officer of the Scottish Administration is answerable to the Parliament for the exercise of the functions set out in subsection (3) below.

Subsection (3)

77. This outlines the functions of the principal accountable officer of the Scottish Administration. These are:

- (a) signing any accounts of the Scottish Administration except where (under the duties of accountable officers of the Scottish Administration set out at

subsection 15(1)), the account is to be signed by another accountable officer of the Scottish Administration,

- (b) signing any account prepared by the Scottish Ministers of payments into and out of the Scottish Consolidated Fund. (The requirement for the Scottish Ministers to produce such accounts is set out at section 19(2).)
- (c) ensuring that the finances of the Scottish Administration are managed properly and in accordance with current legislation;
- (d) ensuring the economic, efficient and effective use of the Administration's resources;
- (e) designating accountable officers and their functions in accordance with section 15;
- (f) ensuring that those functions are carried out by accountable officers for the parts of the Scottish Administration.

Subsection (4)

78. This requires the principal accountable officer of the Scottish Administration to obtain written authority from Ministers (or other relevant non-ministerial office-holder in the Scottish Administration) before undertaking any action he/she considers is inconsistent with his/her duties as set out in subsections (3)(a) to (f); and to report that to the Auditor General for Scotland.

Subsection (5)

79. This defines "non-ministerial officeholder" for the purposes of subsection (4). It basically includes the Keeper of the Registers of Scotland, the Keeper of the Records of Scotland, the Registrar General of Births, Deaths and Marriages for Scotland and the office-holders specified in the Scottish Administration (Offices) Order 1999 (S.I. 1999/1127).

Section 15: Accountable Officers

General Purpose

80. This section sets out the procedures for appointing accountable officers for the Scottish Administration and other bodies. It explains how their functions are to be allocated and sets out (in broad terms) their duties.

Subsection (1)

81. This requires the principal accountable officer for the Scottish Administration to designate members of the staff of the Scottish Administration as accountable officers for such parts of the Scottish Administration as he/she may specify.

Subsection (2)

82. This provides for the possibility that any part of the Scottish Administration may have more than one accountable officer responsible for it. This would enable, for example an accountable officer to be designated for an Agency within a Department whilst still having a departmental accountable officer.

Subsections (3) and (4)

83. These subsections allow the principal accountable officer to designate an accountable officer for any other body or office-holder where the bodies have the audit of their accounts regulated by sections 21 and 22. They include health service bodies, and NDPBs whose accounts are audited by the Auditor General.

Subsection (5)

84. This provides that the powers of the principal accountable officer to appoint other accountable officers as set out in subsection (3) do not apply to bodies for whom the appointment of accountable officers is the subject of specific provision in another enactment. Bodies that are affected include the SPCB and Audit Scotland for whom specific provision is made in sections 16 to 18 of the Act.

Subsection (6)

85. This subsection states that the functions of accountable officers designated under subsections (1) and (3) are to be specified by the principal accountable officer of the Scottish Administration. They also have the duty specified at subsection (8) (see below). The accountable officers are to be answerable to the Parliament for the performance of their functions.

Subsection (7)

86. This subsection states that the principal accountable officer of the Scottish Administration may allocate the following functions, among others, to accountable officers:
- (a) signing the accounts of the expenditure and receipts of the part of the Scottish Administration, or body or office-holder, in question,
 - (b) ensuring the finances of that part, body or office-holder are managed properly and in accordance with statute, and
 - (c) ensuring that the resources of that part, body or office-holder are used economically, efficiently and effectively.

Subsection (8)

87. This defines the duty referred to in subsection (6). Where the accountable officer considers that any action which he/she is required to take is inconsistent with the proper performance of those functions set out in subsection (6), that officer must:
- (a) obtain the written authority of the Scottish Ministers, the Lord Advocate or the body or office-holder in question before taking any action, and
 - (b) send a copy of this authority to the Auditor General for Scotland as soon as possible.

Section 16: Principal Accountable Officer for the Parliamentary Corporation

General Purpose

88. This section provides that the Clerk of the Parliament shall be the principal accountable officer of the SPCB and specifies his/her functions. These are broadly equivalent to the functions of the principal accountable officer of the Scottish Administration.

Section 17: Parliamentary Corporation: Accountable Officers

General Purpose

89. This enables the principal accountable officer of the SPCB to designate accountable officers for such parts of the SPCB as he/she may specify. It also sets out the functions of any accountable officers so designated. They are broadly equivalent to the functions of an accountable officer of the Scottish Administration as described in section 15.

Section 18: Audit Scotland: Accountable Officer

General Purpose

90. This section provides for the appointment of the accountable officer for Audit Scotland and sets out his/her duties.

Section 19: Duty to Prepare Accounts

General Purpose

91. This section makes, amongst other provision, the provision required by section 70(1) (a) and (b) of the Scotland Act. It explains which bodies and office-holders have a duty to produce accounts under the terms of the Act and makes arrangements for the audit of these accounts.

Subsection (1)

92. This subsection requires that the Scottish Ministers, the Lord Advocate and every other person who receives payments direct from the Scottish Consolidated Fund (including in particular the direct funded bodies) in any financial year must prepare accounts of their expenditure and receipts for that year.

Subsection (2)

93. This requires that Scottish Ministers must prepare an account of payments into and out of the Scottish Consolidated Fund for each financial year.

Subsection (3)

94. This subsection requires that, at the request of the Scottish Ministers, holders of non-ministerial offices in the Scottish Executive must prepare accounts of their expenditure and receipts for each financial year. These office-holders are those mentioned at paragraph 79 above in relation to section 14(5).

Subsection (4)

95. This ensures that accounts prepared under subsections (1) to (3) above are done so in accordance with the directions of the Scottish Ministers. By virtue of section 27(4), such directions must be given in writing and may be varied or revoked.

Subsection (5)

96. This provides that subsection (1) does not apply any cross border public authorities to which section 70(6) of the Scotland Act 1998 applies. Section 70(6) expressly precludes provision being made in the Act requiring such an authority to prepare accounts if other legislation requires it to prepare accounts and have them audited by the Auditor General, the Comptroller and Auditor General or a person appointed by either of them. This means that subsection (1) does not apply to any direct funded cross border public authority (eg the Forestry Commission) that has its accounting and/or audit arrangements specified in other legislation.

Subsection (6)

97. This subsection provides that subsection (3) does not apply to office-holders covered by subsection (1). This avoids double accounting requirements in the case of any non-ministerial office-holder in the Scottish Administration who is direct funded.

Subsection (7)

98. This ensures that all accounts prepared under subsections (1) and (3), other than the accounts of Audit Scotland, must be sent to the Auditor General for auditing. This attracts the provisions in sections 21 and 22.

Subsection (8)

99. The accounts of Audit Scotland must be sent to the Scottish Commission for Public Audit for Auditing. The Commission will appoint auditors under section 25. This avoids, in effect, Audit Scotland being involved in the audit of their own accounts.

Section 20: Consolidated Public Accounts

General Purpose

100. This section gives the Scottish Ministers powers to prepare consolidated accounts and also to obtain financial information from bodies outwith the Scottish Administration.

Subsections (1) and (2)

101. These provides that the Scottish Ministers may prepare for any financial year consolidated accounts for the Scottish Administration as a whole, or the Scottish Administration together with other bodies and office-holders – or a class of bodies or office-holders - who appear to the Scottish Ministers to exercise public functions or be entirely or substantially funded from public money. The format of any consolidated accounts will be directed in writing by the Scottish Ministers.

Subsection (3)

102. This subsection makes provision for the preparation of financial information by those bodies or office-holders, or a class of such, designated by the Scottish Ministers.
103. A class or individual body or office-holder which is designated must prepare financial information in the form and manner directed by the Scottish Ministers. Such bodies or office-holders must also arrange for this information to be audited so far as the Scottish Ministers require, and the information must be sent to the Scottish Ministers, together with any required explanation, by such time as they direct.

Subsections (4) to (7)

104. Accounts prepared under subsection (1) must be sent with the Scottish Ministers' determination under that subsection to the Auditor General. The Auditor General must then examine such accounts, prepare and send to the Scottish Ministers a report on whether the accounts have been prepared in accordance with the determination. The Scottish Ministers must lay a copy of the accounts and the report before the Parliament.
105. Subsection (7) ensures that the Auditor General, in examining accounts under this section and in preparing a report, will have access to information as set out in section 24 (1) and (2) of this Act.

Section 21: Audit of Accounts

General Purpose

106. This is the first of two sections covering the arrangements for the audit of accounts produced by the Scottish Administration and certain other public bodies and office holders. The provisions in these 2 sections are made partly in implementation of the requirements imposed by section 70(1)(c) and (f) and (2)(b) of the Scotland Act. The intention is that the arrangements set out in these sections should be the standard

arrangements for public audit of accounts under the control of the Auditor General which may be applied in future legislation.

Subsection (1)

107. This sets out that this section and section 22 will apply to any account which is required whether under current or future legislation or prerogative instruments, such as Royal Charters, to be audited by the Auditor General or to be sent to the Auditor General for auditing.

Subsection (2)

108. This subsection requires that such accounts must be sent to the Auditor General within 6 months of the end of the financial year to which the account relates.

Subsection (3)

109. This states that the account must be audited by the Auditor General or a qualified person appointed by the Auditor General. The Auditor General must take into account not only the person's professional qualifications and experience, but also any other relevant matters.

Subsection (4)

110. This subsection states that the Auditor General for Scotland will decide personally who should audit an account.

Subsection (5)

111. This defines the term "qualified person" as set out at subsection (3)(b) above. It states that this means any person who is eligible for appointment as a company auditor under section 25 of the Companies Act 1989, or who is a member of a body of accountants (ie a professional body such as ICAS) established in the United Kingdom or another state in the European Economic Area. Such states are those contracted to the Agreement on the European Economic Area signed at Oporto on 2 May 1992, as adjusted by the Brussels Protocol signed on 17 March 1993.

Section 22: Audit of Accounts: Further Provisions

Subsection (1)

112. This subsection sets out the matters which the auditor must include in his report on an account. It does not apply to an account of the payments into and out of the Scottish Consolidated Fund. In particular, the auditor must report his/her findings on whether the expenditure and receipts shown in the account were incurred in accordance with relevant enactments, the Budget Act or Acts for the period in question, and the provisions of sections 4 to 7 of this Act. These latter provisions set out rules for payments out of the Fund and for the application of receipts.
113. The auditor must also report on: whether any sums paid out of the Fund were applied in accordance with section 65 of the Scotland Act 1998 (i.e. that they meet the specified conditions for payments out of the Fund); whether expenditure and receipts have been incurred or applied in accordance with any applicable guidance issued by the Scottish Ministers; and whether the account complies with any applicable direction issued under any enactment.

Subsection (2)

114. This subsection makes specific provision for the report on an audit of an account of payments into and out of the Scottish Consolidated Fund. This requires the auditor to

report on his/her findings in relation to whether sums paid out of the fund were paid in accordance with the provisions of section 65 of the 1998 Act (i.e. that they meet the specified conditions for payments out of the Fund), and also as to whether they were paid out in accordance with sections 4 to 6 of this Act, which set out further requirements in relation to payments made from the Fund. The report is also required to set out the auditor's findings on whether the account complies with any applicable direction.

Subsections (3) and (4)

115. These set out the arrangements for submission of the account and the auditor's report by the auditor to the Auditor General and by the Auditor General to the Scottish Ministers. The provisions also enable the Auditor General to prepare a report on the account and submit this to the Scottish Ministers.

Subsection (5)

116. This requires the Scottish Ministers to lay copies of accounts and reports on accounts before the Parliament and to publish these. They are required to do so within 9 months of the end of the financial year to which the accounts relate.

Subsection (6)

117. This deals with the possibility that bodies or office holders whose accounts are being audited have different financial years.

Section 23: Economy, Efficiency and Effectiveness Examinations

General Purpose

118. This section sets out the powers of the Auditor General for Scotland to initiate and carry out examinations of economy, efficiency and effectiveness (commonly known as value for money or vfm studies). It defines those bodies that may be subject to vfm examination and explains who may carry out a study. It implements the requirements in section 70(2)(c) and (d) of the Scotland Act 1998.

Subsection (1)

119. This subsection allows that the Auditor General may initiate examinations into the economy, efficiency and effectiveness of the use of resources of bodies and office-holders mentioned in subsection (2) below.

Subsection (2)

120. This defines those bodies and office-holders that fall within the powers set out at subsection (1) above. They are:
- (a) any body or office-holder whose accounts are audited by the Auditor General or sent to him or her for auditing;
 - (b) any other body or office-holder, or body or office-holder of a class, specified by the Scottish Ministers by order made by statutory instrument. By virtue of section 27(3), such a statutory instrument is subject to annulment in pursuance of a resolution of the Parliament and;
 - (c) any other body or office holder not covered by the above criteria which agrees to such an examination being carried out.

Subsection (3)

121. This ensures that any order made under subsection (2) may only specify those bodies or office-holders that the Scottish Ministers reasonably believe have either obtained

more than a quarter of their income from public funds in any one financial year, or have received more than £500,000 from public funds in the financial year. If the Scottish Ministers are to specify a class of body or office-holder, the Scottish Ministers must reasonably believe that at least half of the bodies or office-holders in that class, in any one financial year, have obtained more than a quarter of their income or have received more than £500,000 from public funds.

Subsection (4)

122. This subsection ensures that the Auditor General for Scotland may only initiate a vfm study on a body or office holder if he/she reasonably believes that in the period in question, the body or office-holder received more than a quarter of its income, or more than £500,000 from public funds. Any vfm study should endeavour to consider only those activities of the body or office holder that involve the use of public funds.

Subsection (5)

123. This defines that for the purposes of subsections (3) and (4), income is to be regarded as being from public funds if it is paid out by any body or office holder mentioned in subsection (2)(a) or by any body or office-holder specified by the Scottish Ministers under subsection (2)(b), that received more than half its income from public funds in the financial year concerned. This definition excludes capital receipts and disregards money received from the sale of property, the supply of goods or services and various other benefits.

Subsection (6)

124. This ensures that, when the Auditor General plans a programme of vfm studies, he/she must take into account any proposals made by the Parliament.

Subsection (7)

125. This subsection requires the Auditor General to consult the Water Industry Commissioner for Scotland before initiating any vfm examination into any of the three new water and sewerage authorities.

Subsection (8)

126. This subsection makes it clear that the Auditor General for Scotland is to decide personally whether to initiate a vfm study and who is to undertake any vfm studies that he/she initiates.

Subsection (9)

127. This allows the person carrying out a vfm study (“the examiner”) to consider the appropriateness of any criteria used by the body under examination to assess its use of resources. The examiner may not, however, question the merits of any policy objectives.

Subsection (10)

128. This ensures that the examiner (if not the Auditor General) reports the results to the Auditor General. The Auditor General may in turn report the results of any examination to the Parliament.

Section 24: Access to Documents and Information

General Purpose

129. This section sets out the rights of access and explanation of an auditor carrying out the functions specified in sections 21 and 22. It also explains the rights of access for an

examiner carrying out an examination of economy, efficiency and effectiveness under the terms set out in section 23. It implements the requirement in section 70(1)(d) of the Scotland Act.

Subsection (1)

130. This sets out the basic power an auditor has when auditing an account under sections 21 and 22. These are powers exercisable in relation to the body or office-holder whose account is being audited. It states that at all reasonable times, the auditor is entitled to have access to any document in the possession or under the control of the body or office-holder who prepared the account as may be reasonably required for the purpose of the audit. The auditor can also require any assistance, information or explanation necessary from any person holding or accountable for such a document. The body or office-holder who prepared the account may also be required to provide accounts of such of their transactions as the auditor may specify.

Subsection (2)

131. This subsection outlines additional powers available to an auditor in relation to third persons for the purposes at subsection (1). The auditor, at all reasonable times, is entitled to have access to any document in the possession or under the control of a relevant person as may be reasonably required for the purpose of the audit. The auditor can also require any assistance, information or explanation necessary from any relevant person for those purposes. “Relevant person” is defined in subsection (5).

Subsection (3)

132. This sets out the basic power of an examiner for the purposes of an examination under section 23. These are powers exercisable in relation to the body or office-holder in respect of whom the examination is being carried out. They are basically the same as those available to an auditor under subsection (1).

Subsection (4)

133. This subsection outlines additional powers available to an examiner in relation to third persons for the purposes of an examination under section 23. They are basically the same as those available to an auditor under subsection (2).

Subsection (5)

134. This defines the term “relevant person” in subsections (2) and (4). This means a person or a class that has been specified, by the Scottish Ministers in an order made by statutory instrument. By virtue of section 27(3) such a statutory instrument is subject to annulment in pursuance of a resolution of the Parliament.

Subsection (6)

135. This subsection makes it possible for the Scottish Ministers to specify one group of persons/classes who are to be subject to access arrangements for audit purposes and another to be subject to access arrangements for examinations of economy, efficiency and effectiveness. It also enables the powers in subsections (2) and (4) to be modified in relation to particular specified persons.

Subsection (7)

136. This defines the term “document” used in this section. A document is anything in which information is recorded in any form. For example, it includes information that is stored electronically.

Section 25: Audit and Examination: Audit Scotland

Subsection (1)

137. This provides that, when required to do so by the Auditor General, the Scottish Commission for Public Audit will appoint a qualified person to audit any account of Audit Scotland which has been sent to the Commission for auditing under section 19(8). This provision is to ensure that the Auditor General for Scotland does not audit, or appoint the auditor for, Audit Scotland.

Subsection (2)

138. This defines the term “qualified” in subsection (1), which has the same meaning as in section 21(5).

Subsection (3)

139. This requires the auditor to examine, certify and report on the account to the Commission, and include in the report the auditor’s findings on the matters set out in section 22(1)(a) and (b).

Subsection (4)

140. This enables the Commission to initiate an examination into the economy, efficiency and effectiveness of Audit Scotland’s use of resources. It enables it to appoint a person to carry out the examination and report on it to the Commission.

Subsection (5)

141. This applies the provisions of section 23(9) to any examination carried out under subsection (4). The effect is to ensure that the examiner cannot question the merits of Audit Scotland’s policy objectives, but is able to consider the appropriateness of any criteria Audit Scotland may use to assess its use of resources.

Subsection (6)

142. This requires the Commission to lay before Parliament a copy of the account and any report by the auditor, and to publish the account and report(s).

Subsection (7)

143. This provision gives the auditor access to documents and information in relation to the audit of Audit Scotland’s account. It makes similar provision in relation to an examination into the economy, efficiency and effectiveness of Audit Scotland’s use of resources.

Subsection (8)

144. This enables the Commission to appoint an auditor or an examiner on terms and conditions determined by the Commission. It also makes provision for the auditor’s and examiner’s remuneration to be met by Audit Scotland.

Section 26: Modification of Enactments

Subsection (2)

145. This enables the Scottish Ministers to modify by order any enactment, prerogative instrument or other instrument or document as deemed necessary or expedient by them in consequence of Part 1 of this Act.

Section 27: Orders and Directions

Subsection (1)

146. This provides that powers to make orders under the Act are to be exercised by statutory instrument.

Subsection (2)

147. This provides that any order under section 26(2) textually amending an Act consequent on Part 2 of the Act must be approved in draft by resolution of the Parliament.

Subsection (3)

148. This specifies that a statutory instrument containing an order under the Act is subject to annulment by resolution of the Parliament. This procedure does not apply to orders under section 26(2), which are subject to the procedures described in subsection (2) above, or to orders under section 30, which concern the commencement of provisions of the Act. The latter orders will not be subject to Parliamentary procedure as is usual.

Subsection (4)

149. This provides that certain directions must be given in writing and that directions may be varied or revoked. The directions referred to are directions by the Auditor General or by the Accounts Commission given to Audit Scotland; directions by Scottish Ministers in relation to the preparation of accounts; and directions given by the Scottish Commission for Public Audit to the SPCB.

Section 28: Transitional, Transitory and Saving Provision

General Purpose

150. This section enables transitory, transitional and saving provision to be made. These will be necessary for various matters, including: providing for the phased introduction of resource accounting and budgeting; transferring existing contracts for audit of some NDPBs and health service bodies to Audit Scotland; and providing for audits and value for money studies that may be in progress when Part 2 of the Act comes into force.

Schedule 1 – Capital Expenditure of, and Borrowing by, Certain Statutory Bodies

General Purpose

151. This schedule amends legislation concerned with the capital expenditure of and borrowing by various statutory bodies. The effect of paragraph 1 is to require the Scottish Ministers, in consenting to capital expenditure under section 94 of the Local Government (Scotland) Act 1973, to keep within a limit set by Budget Act. The remaining provisions ensure that bodies can only borrow in any financial year up to a net limit which will be set by the Parliament in a Budget Act for that year. One limit will be set for all bodies within a particular group. It will limit the net aggregate amount of external borrowing of all of those bodies in the year concerned.

152. The bodies to whom this applies are:

- NHS Trusts (paragraph 2);
- Scottish Homes (paragraph 3);
- Scottish Enterprise and Highlands and Islands Enterprise (paragraph 4);
- New water and sewerage authorities (paragraph 6);
- Scottish Environment Protection Agency (paragraph 7).

Schedule 2: Audit Scotland: Further Provisions

General Purpose

153. This schedule supplements section 10 of the Act which establishes Audit Scotland. (The financial arrangements of Audit Scotland are set out in section 11.)

Paragraphs 1 – 4

154. These paragraphs deal with membership issues. Section 10(2) states that the following should be members of Audit Scotland:
- (a) the Auditor General ,
 - (b) the Chairman of the Accounts Commission, and
 - (c) 3 other members who are to be appointed jointly by the Auditor General and the Chairman of the Accounts Commission.
155. Under the rules set out in these paragraphs, the Auditor General, the Chairman of the Accounts Commission and any members of staff of Audit Scotland or members of the Accounts Commission who are appointed as members, may not receive any additional remuneration for their appointment. They also make it clear that additional members are to serve under terms agreed between the Auditor General and the Chairman of the Accounts Commission. Finally, they make provisions for the resignation of members and for their removal by the Auditor General and the Chairman of the Accounts Commission on grounds of inability or unfitness.

Paragraph 5

156. This paragraph gives Audit Scotland powers to appoint staff and determine their terms and conditions. This paragraph also gives Audit Scotland powers to remunerate staff and make provision for pensions.

Paragraph 6

157. This paragraph gives Audit Scotland the powers it needs (such as to hold property) to carry out its functions. It also provides Audit Scotland with short term borrowing powers.

Paragraph 7

158. This paragraph enables Audit Scotland to appoint a member to preside at meetings, to set its own procedures and provide that its actions are not rendered invalid if there is a vacancy or if a member has not been properly appointed.

Paragraphs 8 and 9

159. These paragraphs make arrangements for the transfer of staff from the Accounts Commission to Audit Scotland. The Act does not make provision for the transfer of staff from the National Audit Office to Audit Scotland. It is expected that this will be achieved by subordinate legislation under other powers.
160. Under the provisions set out in these paragraphs, officers of the Accounts Commission will automatically transfer to Audit Scotland on 1 April 2000. Their terms and conditions must be at least as favourable as those on which the Accounts Commission employed them. There are then a number of technical provisions designed to ensure that no individuals suffer a break in employment due to the transfer and that no officer may be deemed to have been retired or dismissed as a result of the transfer.

161. In addition to the transfer of staff, these paragraphs make provision for the transfer of property, rights and liabilities from the Accounts Commission to Audit Scotland on 1 April 2000.

Schedule 3: Scottish Commission for Public Audit: Further Provisions

General Purpose

162. This schedule makes further provisions relating to the membership, procedures and financing of the Scottish Commission for Public Audit.

Paragraph 1

163. This provides for the person who is the Convener of the Audit Committee immediately prior to Parliament being dissolved to continue to be a member of the Scottish Commission for Public Audit until a new convener is appointed following a general election. This is to ensure that the Commission can continue to exercise its functions.

Paragraph 2

164. This provides that all other members of the Scottish Commission for Public Audit cease to be members when the Parliament is dissolved, or if they resign their membership or cease to be a member of the Parliament. In effect, new members must be appointed after every general election.

Paragraph 3

165. This is to ensure the Commission's acting are not affected by vacancies or defects in the appointment of members.

Paragraph 4

166. This gives the Commission the power to determine for itself its own procedures, including who should preside at its meetings.

Paragraphs 5 to 7

167. These paragraphs require the SPCB to provide, or arrange the provision of, any staff, property or services which the Commission decides it requires to perform its functions. The expenses of the Commission are also to be met by the SPCB. Provision is also made for the Commission to direct the SPCB in relation to these matters. Such directions must be given in writing (section 27(4)).

Schedule 4: Modification of Enactments Relating to Part 2

General Purpose

168. This schedule is for the most part intended to provide consistency in the audit arrangements for a wide range of public bodies. It provides for the specified bodies (other than local authorities) to submit their accounts to the Scottish Ministers, who in turn will be required to send them to the Auditor General for Scotland. The accounts will then be audited in accordance with the standard audit provisions made in sections 21 and 22 of this Act.
169. The effect is to replace current provisions which require auditing by, variously, the Comptroller and Auditor General (although section 120 of the Scotland Act will amend that to the Auditor General), auditors appointed by the Secretary of State, and auditors appointed by bodies themselves. In the case of health service bodies, provision is made for their accounts to be submitted to the Scottish Ministers (for auditing by the Auditor General) rather than to the Accounts Commission as is the current position.

170. The position of local authorities is unchanged; they will continue to be required to send their accounts to the Accounts Commission for auditing. The bodies affected by the amendments in the schedule are-
- (a) the Board of Trustees of the National Galleries of Scotland (paragraph 1);
 - (b) the Board of Trustees of the National Library of Scotland (paragraph 2);
 - (c) the Scottish Hospitals Endowments Research Trust (paragraph 4(2));
 - (d) health service bodies (Health Boards, NHS Trusts, the Common Services Agency, the Mental Welfare Commission, the State Hospital Management Committee and others to which the National Health Service (Scotland) Act 1978 is applied) (paragraph 4(3));
 - (e) the Board of Trustees of the National Museums of Scotland (paragraph 5(2));
 - (f) the Board of Trustees of the Royal Botanic Garden, Edinburgh (paragraph 5(3));
 - (g) the Scottish Legal Aid Board (paragraph 6);
 - (h) Scottish Homes (paragraph 7);
 - (i) Scottish Enterprise and Highlands and Islands Enterprise (paragraph 9);
 - (j) Scottish Natural Heritage (paragraph 10);
 - (k) the Scottish Further Education Funding Council, the Scottish Higher Education Funding Council and boards of management of further education colleges (paragraph 11);
 - (l) new water and sewerage authorities (paragraph 12(2));
 - (m) the Scottish Children's Reporter Administration (paragraph 12(3));
 - (n) the Water Industry Commissioner for Scotland (paragraph 12(4));
 - (o) the Scottish Environment Protection Agency (paragraph 13);
 - (p) the Scottish Criminal Cases Review Commission (paragraph 14); and
 - (q) the Scottish Qualifications Authority (paragraph 15).
171. The schedule also makes various amendments to Part VII of the Local Government (Scotland) Act 1973 that deal with the Accounts Commission for Scotland. The main changes are to reflect the creation of Audit Scotland and the transfer of responsibility for the audit of health service bodies to the Auditor General. As a consequence of the establishment of this body, the Accounts Commission will no longer employ staff, incur expenditure or charge fees. All their costs will be met by Audit Scotland and the staff of that body will provide such assistance and support as the Accounts Commission requires. Audit Scotland will also determine charges to be applied in respect of work relating to local authorities. Accordingly, all provisions relating to the Accounts Commission's powers to appoint staff, incur expenditure and charge fees are repealed. The schedule also removes from the Commission the function of auditing accounts or undertaking studies in respect of health service bodies. These functions will instead fall to the Auditor General. The schedule also makes amendments to the minimum and maximum number of Commissioners that the Scottish Ministers may appoint. The following note shows the effect of the amendments to the 1973 Act.

Local Government (Scotland) Act 1973

This note shows sections 96 to 106 of, and Schedule 8 to, the 1973 Act as amended by the Act. The effect of general modifications made by the Scotland Act is shown in italics. Account has been taken of amendments made to the 1973 Act by the Health Act 1999.

Accounts and audit

96 Accounts and audit

- (1) Every local authority shall keep accounts of all transactions relating to all funds of the authority and, subject to any provision contained in regulations made under section 105 of this Act, the accounts of the general fund of a local authority shall comprise such current, capital and borrowing accounts as may be necessary for the purpose of distinguishing transactions for different purposes.
- (2) All accounts of a local authority shall be made up in respect of each financial year.
- (3) Every local authority shall, in addition to preparing accounts in respect of any financial year, prepare in duplicate an abstract of the accounts for that year.
- (4) The accounts of every local authority in respect of any financial year shall be audited by a professional accountant, who is either a member of the staff of Audit Scotland an officer of the Accounts Commission for Scotland or is an approved auditor appointed by the Commission in accordance with the provisions of this Part of this Act.
- (5) The financial year of a local authority shall be the period of twelve months ending with 31st March; and references in this Act and in any other enactment (whether passed or made before or after the passing of this Act) to the financial year of a local authority shall be construed in accordance with the provisions of this subsection.
- (6) The [*Scottish Ministers*] may by order make provision amending, repealing or revoking, with or without savings, any enactment which is inconsistent with or superseded by subsection (5) above; but no order under this subsection shall have effect unless it is approved by a resolution of [*the Scottish Parliament*].

97 Establishment of Accounts Commission for Scotland.

- (1) There shall be established a body, to be known as the Accounts Commission for Scotland (hereafter in this Part of this Act referred to as “the Commission”), which shall consist of such number of members, not being more than twelve fifteen or less than six eleven, as the [*Scottish Ministers*] may determine, and the members shall be appointed by the [*Scottish Ministers*] after consultation with such associations of local authorities and such organisations connected with the health service as appear to [*them*] to be concerned and with such other organisations or persons as [*they*] may think appropriate.
- (2) The Commission shall have the following functions, that is to say -
 - (a) securing the audit of all accounts of -
 - (i) local authorities;
 - (ii) the bodies mentioned in section 86(1)(a) to (c) of the National Health Service (Scotland) Act 1978;
 - (iii) . . .
 - (iv) the Mental Welfare Commission for Scotland; and
 - ((v) any State Hospital Management Committee constituted under section 91 of the Mental Health (Scotland) Act 1984,
in accordance with the provisions of this Part of the Act;
 - (b) considering all reports made in accordance with the said provisions and investigating all matters raised by any such report;
 - (c) making recommendations to the [*Scottish Ministers*] and to local authorities or, as the case may be, health service bodies in accordance with the said provisions;
 - (d) advising the [*Scottish Ministers*] on any matter relating to the accounting of local authorities or health service bodies which [*they*] may refer to them for advice and

- (e) functions conferred by sections 97A and 97B of this Act.
- (2AA) Any function of the Commission may be exercised on behalf of the Commission by any person (whether or not a member of the staff of Audit Scotland) authorised by the Commission to do so.
- (2AB) Subsection (2AA) above does not apply in relation to the following functions-
 - (a) considering reports in pursuance of subsection (2)(b) above,
 - (b) appointing an auditor under subsection (6) below,
 - (c) deciding who is to audit any account, or class of account, in pursuance of this Part of this Act,
 - (d) deciding whether to undertake or promote a study under section 97A or 105A of this Act.
- (2AC) Subsections (2AA) and (2AB) above do not affect the responsibility of the Commission for the exercise of their functions.
- (2A) ...
- (2B) In this Part of the Act -
 - “health service body” means a body referred to in subsection (2)(a)(ii) to (v) above; and
 - ...
- (3) The [*Scottish Ministers*] may, after consultation, with the Commission, with such associations of local authorities and such organisations connected with the health service as appear to [*them*] to be concerned and with such other organisations or persons as [*they*] may think appropriate, give to the Commission directions of a general character as to the discharge of their functions, and the Commission shall give effect to any direction so given.
- (4) There shall be a Controller of Audit who shall be appointed by the Commission after consultation with, and subject to the approval of, the [*Scottish Ministers*] , and the Commission may appoint such other officers, and may appoint such agents, as they may determine.
- (4AA) The Controller of Audit shall, by virtue of appointment as such, be a member of the staff of Audit Scotland unless that person is also the Auditor General for Scotland.
- (4A) It shall be the duty of the Commission to make, by such date as Secretary of State may determine, an offer of employment by the Commission to each person employed in the civil service of the State in connection with the audit of the accounts of any health service body whose name is notified to the Commission by the Secretary of State for the purposes of this subsection; and the terms of the offer must be such that they are, taken as a whole, not less favourable to the person to whom the offer is made than the terms on which he is employed on the date on which the offer is made.
- (4B) An offer made in pursuance of subsection (4A) above shall not be revocable during the period of three months beginning with the date on which it is made.
- (4C) Where a person becomes an officer of the Commission in consequence of subsection (4A) above, then, for the purposes of the Employment Protection (Consolidation) Act 1978, his period of employment by the Commission and the change of employment shall not break the continuity of the period of employment.
- (4D) Where a person ceases to be employed as mentioned in subsection (4A) above -
 - (a) on becoming an officer of the Commission in consequence of an offer made in pursuance of that subsection; or
 - (b) having unreasonably refused such an offer,

he shall not, on ceasing to be so employed, be treated for the purposes of any scheme under section 1 of the Superannuation Act 1972 as having been retired on redundancy.

- (4E) The Secretary of State may supply to the Commission any information held by him which relates to housing benefit or council tax benefit and which appears to him to be relevant to the exercise of any of the functions of the Commission.
- (5) The provisions of Schedule 8 to this Act shall have effect in relation to the Commission.
- (6) In this Part of this Act “auditor” includes (a) the Controller of Audit, (b) members of the staff of Audit Scotland officers of the Commission, being professional accountants, and (c) auditors appointed by the Commission for the purpose of conducting audits or, as the case may be, a particular audit under this Part of this Act, or a person who is, within the period of five years beginning with the relevant date, approved by the Secretary of State, acting on the recommendation of the Commission and whose approval is not (whether during that period or after its expiry) withdrawn by the Secretary of State acting on such recommendation.
- (6A) In subsection (6) above, “the relevant date” means the date appointed for the coming into force of paragraph 3(3) of Schedule 7 to the National Health Service and Community Care Act 1990.
- (7) A person shall not be appointed as auditor by the Commission under subsection (6) above unless -
- (a) he is eligible for appointment as a company auditor under section 25 of the Companies Act 1989; or
 - (b) he is a member of the Chartered Institute of Public Finance and Accountancy or of any other body of accounts established in the United Kingdom and for the time being approved by the [*Scottish Ministers*] for the purposes of this subsection.

97A Studies for improving economy etc in services

- (1) The Commission shall undertake or promote comparative and other studies designed to enable it to make recommendations for improving economy, efficiency and effectiveness in the provision of services by local authorities or by other bodies whose accounts are required to be audited in accordance with this Part of this Act, and for improving the financial or other management of such authorities or other bodies.
- (2) The Commission shall publish or otherwise make available its recommendations and the results of any studies undertaken or promoted under this section and, in the case of studies relating to a health service body, shall on request, furnish to the Comptroller and Auditor General all material relevant to the studies.
- (3) Before undertaking or promoting any study under this section the Commission shall consult such associations of local authorities or other bodies whose accounts are required to be audited in accordance with this Part of this Act as appear to it to be concerned and such associations of employees as appear to it to be appropriate and, in the case of a health service body, the Commission shall also consult the Secretary of State and the Comptroller and Auditor General.

97B Furnishing of information and documents to the Commission

- (1) Without prejudice to any other provision of this Part of this Act, the Commission may require any body whose accounts are required to be audited in accordance with this Part of this Act, and any officer or member of any such body, to furnish the Commission or any person authorised by it with all such information as the Commission or that person may reasonably require for the discharge of the functions under this Part of this Act

of the Commission or of that person, including the carrying out of any study under section 97A of this Act.

- (2) Any person who without reasonable excuse fails to comply with a requirement imposed by subsection (1) above shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

98 Expenses and accounts of Commission

- (1) The Commission shall have power to incur such expenses as appear to them to be necessary or expedient for the proper discharge of their functions, and such expenses shall be met by Audit Scotland-
 - (a) the Secretary of State may, with the consent of the Treasury, pay to the Commission relating to their functions with respect to local authorities grants of such amounts, at such times and subject to such conditions as he may determine in respect of expenses incurred by the Commission as aforesaid;
 - (b) such part of the expenses of the Commission as it not met by grants under paragraph (a) above shall be met by local authorities in accordance with regulations made by the Secretary of State after consultation with such associations of local authorities as appear to him to be concerned;
 - (c) such part of the expenses of the Commission relating to their functions with respect to health service bodies as it not met by grants under paragraph (a) above shall be met by health service bodies in accordance with regulations made by the Secretary of State after consultation with such organisations connected with the health service as appear to him to be concerned.
- (2) A statutory instrument containing regulations made by the Secretary of State under paragraph (b) or (c) of subsection (1) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) The Commission shall keep proper accounts and other records in relation to their accounts and shall prepare in respect of each financial year a statement of account in such form as the Secretary of State may, with the approval of the Treasury, direct.
- (4) The statement of account prepared by the Commission in respect of each financial year shall be submitted to the Secretary of State before such date, as he may, with the approval of the Treasury, direct.
- (5) The Secretary of State shall, on or before 31st March in each year, transmit to the Comptroller and Auditor General the statement of account prepared by the Commission for the financial year last ended.
- (6) The Comptroller and Auditor General shall examine and certify the statement of account transmitted to him under subsection (5) above and shall lay before Parliament copies of that statement together with his report thereon.
- (7) In this section “financial year” means the period of twelve months ending with 31st October in any year.

99 General duties of auditors

In auditing the accounts of any local authority or health service body under this Part of this Act, an auditor shall, by examination of the accounts and otherwise, satisfy himself that -

- (a) the accounts have been prepared in accordance with regulations made under section 105 of this Act or, in the case of a health service body, directions under section 86(3) of the National Health Service (Scotland) Act 1978 and comply with the requirements of all other enactments and instruments applicable to the accounts;

- (b) proper accounting practices have been observed in the preparation of the accounts;
- (c) that the local authority or health service body has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources; and
- (d) in a case where that body are required to publish information in pursuance of a direction under section 1 of the Local Government Act 1992 (publication of performance information), that body have made such arrangements for collecting and recording the information, and for publishing it, as are required for the performance of their duties under that section.

100 Auditor's right of access to documents

- (1) An auditor shall have a right of access at all reasonable times to all such documents relating to the accounts of a local authority or health service body as it appears to him to be necessary to examine for the purpose of auditing those accounts under this Part of this Act and shall be entitled to require from any officer of that authority or body or any other person holding or accountable for any such document such information and explanation as he thinks necessary for the said purpose and, if he thinks it necessary for providing any such information or explanation, to require any such officer or other person to attend before him in person and produce any such documents.
- (1A) In the case of a recognised fund-holding practice, the reference in subsection (1) above to documents includes a reference to documents relating to all the accounts and records of the members of the practice, whether or not relating to an allotted sum.
- (1B) Without prejudice to subsection (1) above, the auditor shall be entitled to require any officer, former officer, member or former member of an authority or body whose accounts are required to be audited in accordance with this Part of this Act to give him such information or explanation as he thinks necessary for the purposes of the audit and, if he thinks it necessary, to require any of the persons mentioned above to attend before him in person to give the information or explanation.
- (2) Without prejudice to subsections (1) and (1B) above, every local authority and health service body shall provide an auditor with every facility and all information which he may reasonably require for the purpose of auditing their accounts.
- (3) If any person wilfully or negligently fails to comply with any requirement of an auditor under subsection (1) or (1B) above, he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

101 Right of interested person to inspect and object to accounts: completion of audit

- (1) At each audit under this Part of this Act of a local authority's accounts, any persons interested may inspect the accounts to be audited and all books, deeds, contracts, bills, vouchers and receipts relating thereto and make copies of all or any part of the accounts and those other documents.
- (2) Any person interested may object to the accounts of a local authority or to any part of those accounts by -
 - (a) sending his objection in writing, together with a statement of the grounds thereof, to the auditor, and
 - (b) sending a copy of that objection and statement to the authority and to any officer of the authority who may be concerned.
- (3) Where any person objects under subsection (2) above to the accounts of a local authority, the auditor shall, if so requested by that person or authority or by any officer of the authority who may be concerned, afford to that person or authority or officer, as the case may be, an opportunity of appearing before and being heard by the auditor with

respect to that objection; and any such person or officer may so appear and be heard either personally or by a representative.

- (4) Within fourteen days of the completion of the audit of the accounts of a local authority the auditor shall place on each duplicate abstract of those accounts prepared by the authority under section 96(3) of this Act a certificate, in such form as the Commission may direct, to the effect that he has audited the accounts in accordance with the provisions of this Part of this Act; and the auditor shall, on so certifying, forthwith send one duplicate abstract of the accounts to the Commission and the other duplicate abstract to the local authority.
- (5) Within 14 days of the completion of the audit of the accounts of a health service body the auditor shall place on any abstract of those accounts prepared by the health service body by virtue of section 86 of the National Health Service (Scotland) Act 1978 a certificate, in such form as the Commission may direct, to the effect that he has audited the accounts in accordance with the provisions of this Part of this Act: and the auditor shall, on so certifying, forthwith send copies of the abstract of the accounts to the Commission, the Secretary of State and the health service body.

101A Reference of social security matters to Secretary of State

The Commission or an auditor may refer to the Secretary of State any matter arising from an audit or study under this Part of this Act if it appears that it may be relevant for the purposes of any of the functions of the Secretary of State relating to social security.

102 Reports to Commission by Controller of Audit

- (1) The Controller of Audit shall make to the Commission such reports as they may require with respect to the accounts of local authorities and health service bodies audited under this Part of this Act and shall send a copy of any report so made to any local authority or health service body which is named in that report and may send a copy of any report so made to any other person he thinks fit.
- (2) Without prejudice to subsection (1) above, the Controller of Audit may make a report to the Commission on any matters arising out of or in connection with the accounts of a local authority in order that those matters may be considered by the local authority concerned or brought to the attention of the public, and shall send a copy of any report so made to any local authority which is named in that report and may send a copy of any report so made to any other person he thinks fit.
- (2A) A local authority shall, forth with upon their receiving a copy of a report sent to them under subsection (1) or (2) above, supply a copy of that report to each member of the authority and make additional copies available for public inspection.
- (3) Without prejudice to subsection (1) above, if the Controller of Audit, having considered any matter arising out of the auditing under this Part of this Act of the accounts of any local authority and having made such further inquiries (if any) as he may think fit -
 - (a) is of the opinion -
 - (i) that any item of account is contrary to law, or
 - (ii) that there has been a failure on the part of any person to bring into account any sum which ought to have been brought into account, or
 - (iii) that any loss has been incurred or deficiency caused by the negligence or misconduct of any person or by the failure of the authority to carry out any duty imposed on them by any enactment; or
 - (b) is of the opinion that any sum which ought to have been credited or debited to one account of the authority has been credited or, as the case may be debited to another account of the authority; and

- (c) is not satisfied that the authority has taken or is taking such steps as may be necessary to remedy the matter;
- he shall make to the Commission a special report with respect to the said accounts, setting forth his opinion as aforesaid and the grounds thereof.
- (4) The Controller of Audit shall, on making a special report under subsection (3) above with respect to the accounts of any local authority, forthwith send a copy of that special report -
 - (a) to that authority;
 - (b) to any officer of the authority who may be concerned;
 - (c) if the matter raised by the special report has been made the subject of objection under section 101 of this Act, to the person making that objection;
 - (d) to any other person who in his opinion may be affected thereby.
 - (5) Without prejudice to subsection (1) above and section 104A(2) of this Act, the Controller of Audit may make a report to the Commission on any matters arising out of or in connection with the accounts of a health service body and shall send a copy of any report so made to any health service body which is named in that report and to the Secretary of State.

103 Action by Commission on reports by Controller of Audit

- (1) Subject to subsection (2) below, the Commission shall consider any report made to them by the Controller of Audit with respect to the accounts of any local authority and may, if they think fit, hold a hearing into any matter raised by that report; and the Commission may thereafter make to the [*Scottish Ministers*] or to any local authority such recommendation as appears to the Commission to be appropriate in the light of the report.
- (2) Where a special report is made to them under section 102(3) of this Act with respect to the accounts of any local authority, the Commission -
 - (a) shall consider that special report and any observations on it made in writing by the authority or by any person to whom a copy of it was sent under section 102(4) of this Act, being observations made within fourteen days of the date on which such copy was sent as aforesaid to the authority or, as the case may be, that person or such longer period as the Commission may in any particular case allow;
 - (b) may if they think fit, and shall if so requested by the authority or by any person to whom a copy of the special report was sent as aforesaid, hold a hearing into any matter raised by the special report; and
 - (c) may if they think fit, and shall if so directed by the Court of Session, state a case on any question of law arising on the special report for the opinion of the Court of Session.
- (3) Subject to subsection (4) below, if after consideration of the matters referred to in subsection (2) above the Commission find that any item of expenditure is contrary to law, or that there has been a failure to bring into account any sum which ought to have been brought into account, or that any loss or deficiency has been incurred or caused as mentioned in section 102(3)(a) of this Act, or that a local authority have not taken steps to remedy such a matter as is referred to in section 102(3)(b) of this Act, the Commission shall send the special report together with their findings to the [*Scottish Ministers*] and may recommend [*them*] to make an order -
 - (a) requiring any person whom they find responsible for incurring or authorising that expenditure, or for that failure, or for that loss or deficiency, as the case may be, to pay to the local authority concerned an amount not exceeding the amount of the said expenditure, or of the said sum, or of the said loss or deficiency; or, as the case may be,

- (b) directing the authority to make such rectification of their accounts as appears to the Commission to be necessary.
- (4) The Commission shall not recommend that any officer or member of a local authority be ordered to pay any amount to the authority by reason only of his having signed a cheque or order in respect of any payment, if he satisfies the Commission -
 - (a) in the case of an officer of the authority, that before signing the cheque or order he advised the authority in writing that in his opinion the payment was contrary to law; or
 - (b) in the case of a member of the authority, that the payment was made in pursuance of an order of the authority or of an authorised committee thereof and that before he signed the cheque or order the authority had not been advised by any officer of the authority that in the opinion of that officer the payment was contrary to law.
- (5) The Commission shall, on making a recommendation under subsection (3) above in relation to a special report made to them with respect to the accounts of any local authority, forthwith send a copy of that recommendation to the authority and to any person to whom a copy of the special report was sent under section 102(4) of this Act.
- (6) At any hearing held by them under this section the Commission -
 - (a) shall afford an opportunity of appearing before and being heard by the Commission to the representative of any local authority which is likely to be affected by any recommendation of the Commission and to, or to the representative of, any other person who is likely to be so affected;
 - (b) may require the attendance of members or officers, or former members or officers, of any local authority to give oral evidence to the Commission; and
 - (c) may pay to any person attending a hearing under this section such expenses as they think fit.
- (7) If any person wilfully or negligently fails to comply with any requirement of the Commission under paragraph (b) of subsection (6) above, he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

104 Action by [*the Scottish Ministers*] on recommendation by Commission under s103(3)

- (1) Where recommendations are made to the [*Scottish Ministers*] under section 103(3) of this Act the [*Scottish Ministers*] may make an order giving effect to any recommendation, with out without modifications, or may decline to make such an order.
- (2) The [*Scottish Ministers*] shall not make an order under subsection (1) above requiring a person to pay an amount to a local authority if the [*Scottish Ministers*] are satisfied that the [*Scottish Ministers*] shall, in deciding whether or not to make such an order as aforesaid and, if [*they*] decide to make it, what amount to specify therein, have regard to all the circumstances of the case, including such information as may be available to [*them*] as to the means of any person concerned and his ability to pay any amount to the local authority.
- (3) Where by virtue of an order made under subsection (1) above two or more persons are required to pay an amount to a local authority, those persons shall, if the order so specifies, be liable jointly and severally to pay that amount to the authority.
- (4) The [*Scottish Ministers*] shall, on making an order under subsection (1) above requiring a person to pay an amount to a local authority, forthwith cause a copy of that order to be sent -
 - (a) to that person;

- (b) to the Commission; and
 - (c) to that authority.
- (5) Any amount which, by virtue of an order made under subsection (1) above, is due to be paid by any person to a local authority shall be paid by that person to the authority within fourteen days of the date on which a copy of that order was sent to him under subsection (4) above; and, if that amount is not so paid, it shall be the duty of the Commission to recover the amount on behalf of the authority and if need be to institute proceedings for that purpose; and the authority shall reimburse the Commission for any expenses incurred by the Commission so far as not recovered from the person liable to pay the amount.
- (6) A local authority shall give effect to any direction given to them in an order under subsection (1) above.

104A Audit of accounts of health service bodies: special provisions

- (1) Where the auditor of the accounts of a health service body has reason to believe that the body, or any officer of the body -
- (a) has made a decision which involves the incurring of expenditure which is unlawful; or
 - (b) has taken a course of action which, if pursued to its conclusion, would be unlawful and likely to cause a loss or deficiency,
- he shall forthwith make a report to the Controller of Audit.
- (2) On receipt of a report under subsection (1) above the Controller of Audit -
- (a) shall forthwith send a copy of the report to the Commission and to the Secretary of State; and
 - (b) may, if he thinks fit, send to the Commission and to the Secretary of State any observations which he may have on the report.
- (3) The Commission may make a report to the Secretary of State on any matters arising out of or in connection with the accounts of a health service body.

105 Regulations as to accounts

- (1) The [*Scottish Ministers*] may by regulations under this section make such provision as appears to [*them*] to be necessary or expedient for the purpose of rendering sections 96 to 104 of this Act of full effect and, without prejudice to the foregoing generality, such regulations may contain provisions with respect to the following matters, that is to say -
- (a) the form, preparation, keeping and authentication of accounts of local authorities and of any abstract of such accounts;
 - (b) the date in each year before which such accounts and abstract are to be authenticated on behalf of a local authority;
 - (c) the deposit by a local authority, within such period as may be specified in the regulations, of copies of such abstract at the offices of the authority or at any other place, and the publication by the authority of information with respect to such accounts;
 - (d) the exercise, within such period as may be specified in the regulations, of the rights of inspection and objection conferred by section 101 of this Act in relation to any such accounts and other documents, and the steps to be taken by a local authority for informing persons of those rights;
 - (e) the giving of public notice by a local authority of any order made in relation to them by the [*Scottish Ministers*] under section 104(1) of this Act.
- (2) Before making regulations under this section, the [*Scottish Ministers*] shall consult with such associations of local authorities as appear to him to be concerned.

- (3) If any person wilfully or negligently contravenes any provision of any regulations made under this section, contravention of which is declared by the regulations to be an offence, he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (4) A statutory instrument containing regulations made by the [*Scottish Ministers*] under this section shall be subject to annulment in pursuance of a resolution of [*the Scottish Parliament*].

105A Studies of benefit administration at request of Secretary of State.

- (1) The Secretary of State may request the Commission to conduct or assist the Secretary of State in conducting studies designed to improve economy, efficiency, effectiveness and quality of performance in the discharge by local authorities of functions relating to the administration of housing benefit and council tax benefit.
- (2) In the following provisions of this section ‘study’ means a study which the Commission are requested to conduct, or assist the Secretary of State in conducting, under subsection (1) above.
- (3) If the Commission require –
 - (a) any local authority included in a study; or
 - (b) any officer or member of such an authority,to supply the Commission or an authorised person with such information as is needed for the purposes of the study, the authority or officer or member shall supply the information.
- (4) If the Commission require any local authority included in a study to make available for inspection by the Commission or an authorised person documents which relate to the authority and are needed for the purposes of the study, the authority shall make the documents available.
- (5) Any information obtained under a requirement under subsection (3) or (4) above may be disclosed by the Commission to the Secretary of State for the purposes of any functions of his which are connected with housing benefit or council tax benefit.
- (6) In subsections (3) and (4) above ‘authorised person’ means a person authorised by the Commission for the purposes of this section.
- (7) The Commission shall send to the Secretary of State a copy of any report of a study; and the Secretary of State or the Commission may send a copy of a report of a study to any local authority to which the study relates.
- (8) Any report of a study may be published by the Secretary of State in conjunction with the Commission.
- (9) The Commission shall not conduct, or assist the Secretary of State in conducting, a study unless, before they do so, the Secretary of State has made arrangements for the payment of such reasonable amount as may be agreed between him and the Commission in respect of the study.

106 Application of ss 93 to 105 to bodies other than local authorities and to officers.

- (1) The foregoing provisions of this Part of this Act and any regulations made by the [*Scottish Ministers*] under section 105 of this Act shall, subject to any necessary modifications, apply with respect to the following bodies, that is to say –
 - (a) any committee, joint committee or joint board all the members of which, other than any ex officio members, are appointed by one or more local authorities;

- (b) the trustees for any charity, foundation, mortification, or other purpose, where a local authority, or some members of such an authority as such, as the sole trustees for such charity, foundation, mortification or other purpose;
 - (c) ...
- (2) Where an officer of a body whose accounts are required to be audited in accordance with this Part of this Act receives any money or other property on behalf of that body, or receives any money or other property for which he ought to account to that body, the accounts of that officer shall be audited by the auditor of the accounts of the body, and sections 96 to 105 of this Act and any regulations made by the [*Scottish Ministers*] under section 105 of this Act shall, subject to any necessary modifications, apply accordingly to those accounts and that audit.
- (3) In the application of subsection (2) above to an officer of a health service body, for the words from '96' to 'section 105' there shall be substituted '97 to 104A'.
- (3) In the application of subsection (2) above to an officer of a health service body, for the words from '96' to 'section 105' there shall be substituted '97 to 104A'.

SCHEDULE 8

(introduced by section 97)

PROVISIONS AS TO THE ACCOUNTS COMMISSION FOR SCOTLAND

- 1 The Accounts Commission for Scotland (hereafter in this Schedule referred to as 'the Commission') shall be a body corporate and shall have a common seal.
- 2 (1) Each member of the Commission shall, subject to sub-paragraph (4) below, hold and vacate office in accordance with the terms of his appointment.
- (2) A member of the Commission may at any time resign office as such by notice in writing given to the [*Scottish Ministers*] .
- (3) A person who has held office as a member of the Commission shall be eligible for reappointment.
- (4) The [*Scottish Ministers*] may remove a person from membership of the Commission if he is satisfied that the person –
- (a) has had his estate sequestrated or has made a trust deed for behoof of his creditors or a composition contract;
 - (b) is incapacitated by physical or mental illness;
 - (c) has been absent from meetings of the Commission for a period longer than six consecutive months otherwise than for a reason approved by the [*Scottish Ministers*] ; or
 - (d) is otherwise unable or unfit to discharge the function of a member.
- 3 (1) The [*Scottish Ministers*] shall appoint one of the members of the Commission to be chairman, and another of the members of the Commission to be deputy chairman, of the Commission.
- (2) The chairman or deputy chairman of the Commission may at any time resign office as such by notice in writing given to the [*Scottish Ministers*] .
- (3) If the chairman or deputy chairman of the Commission ceases to be a member of the Commission he shall cease to be chairman or, as the case may be, deputy chairman of the Commission.
- 3A There may be paid to any member of the Commission out of their funds such salary or fees and allowances as may be approved by the [*Scottish Ministers*]; and such salary, fees and allowances shall be paid by Audit Scotland.

- 4 (1) At any meeting of the Commission, including any hearing under section 103 of this Act, the quorum shall be four five or such larger number as the Commission may determine.
- (2) In the case of an equality of votes at any meeting of the Commission the person acting as chairman of the meeting shall have a second or casting vote.
- (3) The proceedings of the Commission shall not be invalidated by any vacancy in their membership or by any defect in the appointment of any person as a member, or as chairman or deputy chairman, of the Commission.
- (4) Subject to the foregoing provisions of this paragraph, the Commission shall have power to regulate their own procedure.
- 5 ...
- 6 (1) Officers and agents appointed by the Commission shall hold office on such reasonable terms and conditions, including conditions as to remuneration, as the Commission think fit.
- (2) The Commission may pay such pensions, allowances or gratuities to or in respect of any of their officers on their retirement or death, or make such payments towards the provision of such pensions, allowances or gratuities, as the Commission think fit.
- 7 The Commission shall have power generally to do such acts as may appear to them to be necessary or expedient for the proper discharge of their functions and, without prejudice to the generality of the foregoing provision, the Commission may –
- (a) borrow, on the security of any property belonging to them, any money necessary for the purpose of meeting any expenses incurred by them or in connection with the discharge of their functions;
- (b) acquire such property (whether heritable or moveable) as may, in the opinion of the Commission, be necessary or desirable for the discharge of any of their functions, and dispose as they think fit of any property so acquired.