



# Audit Commission Act 1998

## 1998 CHAPTER 18

An Act to consolidate Part III of the Local Government Finance Act 1982 and other enactments relating to the Audit Commission for Local Authorities and the National Health Service in England and Wales. [11th June 1998]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### PART I

#### THE AUDIT COMMISSION

#### **1 The Audit Commission**

- (1) There shall continue to be a body known as the Audit Commission for Local Authorities and the National Health Service in England and Wales.
- (2) The Commission shall consist of not less than 15 nor more than 20 members appointed by the Secretary of State.
- (3) The Secretary of State shall appoint one of the members to be chairman and another to be deputy chairman.
- (4) An appointment under subsection (2) or (3) shall be made after consultation with such organisations and other bodies as appear to the Secretary of State to be appropriate.
- (5) Schedule 1 has effect with respect to the Commission.

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## **PART II**

### **ACCOUNTS AND AUDIT OF PUBLIC BODIES**

#### *Audit of accounts*

#### **2 Required audit of accounts**

- (1) The accounts to which this section applies—
  - (a) shall be made up each year to 31st March or such other date as the Secretary of State may generally or in any special case direct, and
  - (b) shall be audited in accordance with this Act by an auditor or auditors appointed by the Commission.
- (2) This section applies to the accounts mentioned in Schedule 2.

#### **3 Appointment of auditors**

- (1) An auditor appointed by the Commission to audit the accounts of a body whose accounts are required to be audited in accordance with this Act (“a body subject to audit”) may be—
  - (a) an officer of the Commission,
  - (b) an individual who is not an officer of the Commission, or
  - (c) a firm of individuals who are not officers of the Commission.
- (2) Where two or more auditors are appointed in relation to the accounts of a body, some but not others may be officers of the Commission and they may be appointed—
  - (a) to act jointly;
  - (b) to act separately in relation to different parts of the accounts; or
  - (c) to discharge different functions in relation to the audit.
- (3) Before appointing an auditor or auditors to audit the accounts of a body other than a health service body the Commission shall consult that body.
- (4) For the purpose of assisting the Commission in deciding on the appointment of an auditor or auditors in relation to the accounts of a body other than a health service body, the Commission may require the body to make available for inspection by or on behalf of the Commission such documents relating to any accounts of the body as the Commission may reasonably require for that purpose.
- (5) A person shall not be appointed by the Commission as an auditor unless—
  - (a) he is a member of one or more of the bodies mentioned in subsection (7);
  - (b) he has such other qualifications as may be approved for the purposes of this section by the Secretary of State; or
  - (c) he was approved before 1st April 1996 by the Secretary of State under section 13(5) of the Local Government Finance Act 1982, and the approval has not been withdrawn.
- (6) A firm shall not be appointed by the Commission as an auditor unless each of its members is a member of one or more of the bodies mentioned in subsection (7).
- (7) The bodies referred to in subsections (5) and (6) are—

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- (a) the Institute of Chartered Accountants in England and Wales;
  - (b) the Institute of Chartered Accountants of Scotland;
  - (c) the Association of Certified Accountants;
  - (d) the Chartered Institute of Public Finance and Accountancy;
  - (e) the Institute of Chartered Accountants in Ireland; and
  - (f) any other body of accountants established in the United Kingdom and for the time being approved by the Secretary of State for the purposes of this section.
- (8) The appointment by the Commission of an auditor who is not an officer of the Commission shall be on such terms and for such period as the Commission may determine.
- (9) Arrangements may be approved by the Commission, either generally or in a particular case, for a person or persons to assist an auditor appointed by the Commission (whether the auditor is an officer of the Commission or not) by carrying out such of the auditor's functions under this Act as may be specified in the arrangements.
- (10) Subsection (9) does not apply to functions under section 19.
- (11) References in the following provisions of this Act to an auditor include, in relation to any function of an auditor, a reference to any person carrying out that function under arrangements approved under subsection (9).

#### **4 Code of audit practice**

- (1) The Commission shall prepare, and keep under review, a code of audit practice prescribing the way in which auditors are to carry out their functions under this Act.
- (2) A different code may be prepared with respect to the audit of the accounts of health service bodies as compared with the code applicable to the accounts of other bodies.
- (3) A code prepared under this section shall embody what appears to the Commission to be the best professional practice with respect to the standards, procedures and techniques to be adopted by auditors.
- (4) A code does not come into force until approved by a resolution of each House of Parliament, and its continuation in force is subject to its being so approved at intervals of not more than five years.
- (5) Subsection (4) does not preclude alterations to a code being made by the Commission in the intervals between its being approved in accordance with that subsection.
- (6) The Commission shall send copies of any code prepared under this section, and of any alterations made to such a code, to the Secretary of State who shall lay them before Parliament; and the Commission shall from time to time publish any such code as for the time being in force.
- (7) Before preparing or altering a code applicable to any accounts, the Commission shall consult—
- (a) if the accounts are or include those of health service bodies, such organisations connected with the health service as appear to the Commission to be concerned;
  - (b) if the accounts are or include those of other bodies, such associations of local authorities as appear to the Commission to be concerned; and

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- (c) in any case, such bodies of accountants as appear to the Commission to be appropriate.

## **5 General duties of auditors**

- (1) In auditing accounts required to be audited in accordance with this Act, an auditor shall by examination of the accounts and otherwise satisfy himself—
  - (a) if they are accounts of a health service body, that they are prepared in accordance with directions under subsection (2), (2B) (NHS trusts) or (2B) (fund-holding practices) of section 98 of the National Health Service Act 1977;
  - (b) in any other case, that they are prepared in accordance with regulations under section 27;
  - (c) that they comply with the requirements of all other statutory provisions applicable to the accounts;
  - (d) that proper practices have been observed in the compilation of the accounts;
  - (e) that the body whose accounts are being audited has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources; and
  - (f) that that body, if required to publish information in pursuance of a direction under section 44 (performance information), has made such arrangements for collecting and recording the information and for publishing it as are required for the performance of its duties under that section.
- (2) The auditor shall comply with the code of audit practice applicable to the accounts being audited as that code is for the time being in force.

## **6 Auditors' right to documents and information**

- (1) An auditor has a right of access at all reasonable times to every document relating to a body subject to audit which appears to him necessary for the purposes of his functions under this Act.
- (2) An auditor may—
  - (a) require a person holding or accountable for any such document to give him such information and explanation as he thinks necessary for the purposes of his functions under this Act; and
  - (b) if he thinks it necessary, require the person to attend before him in person to give the information or explanation or to produce the document.
- (3) In the case of a recognised fund-holding practice, subsections (1) and (2) apply to documents relating to any of the accounts and records of the members of the practice whether or not relating to the allotted sum.
- (4) Without prejudice to subsection (2), the auditor may—
  - (a) require any officer or member of a body subject to audit to give him such information or explanation as he thinks necessary for the purposes of his functions under this Act; and
  - (b) if he thinks it necessary, require the officer or member to attend before him in person to give the information or explanation.

- (5) Without prejudice to subsections (1) to (4), every body subject to audit shall provide the auditor with every facility and all information which he may reasonably require for the purposes of his functions under this Act.
- (6) A person who without reasonable excuse fails to comply with any requirement of an auditor under subsection (1), (2) or (4) is guilty of an offence and liable on summary conviction—
  - (a) to a fine not exceeding level 3 on the standard scale, and
  - (b) to an additional fine not exceeding £20 for each day on which the offence continues after conviction for that offence.
- (7) Any expenses incurred by an auditor in connection with proceedings for an offence under subsection (6) alleged to have been committed in relation to the audit of the accounts of any body, so far as not recovered from any other source, are recoverable from that body.

## **7 Fees for audit**

- (1) The Commission shall prescribe a scale or scales of fees in respect of the audit of accounts which are required to be audited in accordance with this Act.
- (2) Before prescribing any scale of fees under subsection (1) the Commission shall consult—
  - (a) if the scale relates to the audit of accounts of a health service body, such organisations connected with the health service as appear to the Commission to be concerned;
  - (b) if the scale relates to the audit of accounts of any other body, such associations of local authorities as appear to the Commission to be concerned; and
  - (c) in any case, such bodies of accountants as appear to the Commission to be appropriate.
- (3) A body subject to audit shall, subject to subsection (4), pay to the Commission the fee applicable to the audit in accordance with the appropriate scale.
- (4) If it appears to the Commission that the work involved in a particular audit was substantially more or less than that envisaged by the appropriate scale, the Commission may charge a fee which is larger or smaller than that referred to in subsection (3).
- (5) For the purpose of determining the fee payable for an audit, a body whose accounts are being audited or (if it is a parish meeting) its chairman shall—
  - (a) complete a statement containing such information as the Commission may require and submit it to the auditor, and
  - (b) provide the Commission with such further information as it may at any time require.
- (6) The auditor shall send the statement mentioned in subsection (5)(a) to the Commission on the conclusion of the audit with a certificate that the statement is correct to the best of his knowledge and belief.
- (7) The fee payable for an audit shall be the same whether the auditor who carries it out is an officer of the Commission or not.
- (8) If the Secretary of State considers it necessary or desirable to do so, he may by regulations prescribe a scale or scales of fees to have effect, for such period as

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is specified in the regulations, in place of any scale or scales prescribed by the Commission; and, if he does so, references in subsections (3) and (4) to the appropriate scale are to be read as respects that period as references to the appropriate scale prescribed by the Secretary of State.

- (9) Before making any regulations under subsection (8) the Secretary of State shall consult—
- (a) the Commission,
  - (b) such associations of local authorities as appear to him to be concerned, and
  - (c) such bodies of accountants as appear to him to be appropriate.

#### *Auditors' reports and recommendations*

### **8 Immediate and other reports in public interest**

In auditing accounts required to be audited in accordance with this Act, the auditor shall consider—

- (a) whether, in the public interest, he should make a report on any matter coming to his notice in the course of the audit, in order for it to be considered by the body concerned or brought to the attention of the public, and
- (b) whether the public interest requires any such matter to be made the subject of an immediate report rather than of a report to be made at the conclusion of the audit.

### **9 General report**

- (1) When an auditor has concluded his audit of the accounts of any body under this Act he shall, subject to subsection (2), enter on the relevant statement of accounts prepared pursuant to regulations under section 27 (or, where no such statement is required to be prepared, on the accounts)—
  - (a) a certificate that he has completed the audit in accordance with this Act, and
  - (b) his opinion on the statement (or, as the case may be, on the accounts).
- (2) Where an auditor makes a report to the body concerned under section 8 at the conclusion of the audit, he may include the certificate and opinion referred to in subsection (1) in that report instead of making an entry on the statement or accounts.

### **10 Transmission and consideration of section 8 reports**

- (1) Any report under section 8 shall be sent by the auditor to the body concerned or (if it is a parish meeting) to its chairman—
  - (a) forthwith if it is an immediate report;
  - (b) otherwise not later than 14 days after conclusion of the audit.
- (2) A copy of the report shall be sent by the auditor to the Commission and (in the case of a health service body) to the Secretary of State—
  - (a) forthwith if it is an immediate report;
  - (b) otherwise not later than 14 days after conclusion of the audit.
- (3) The body concerned shall take the report into consideration—
  - (a) in accordance with sections 11 and 12, or

- (b) if section 11 does not apply to the body, as soon as practicable after receiving it.
- (4) The agenda supplied to the members for the meeting of the body at which the report is considered shall be accompanied by the report.
- (5) The report shall not be excluded—
  - (a) from the matter supplied under section 1(4)(b) of the Public Bodies (Admission to Meetings) Act 1960 or section 100B(7) of the 1972 Act (supply of agenda etc. to newspapers); or
  - (b) from the documents open to inspection under section 100B(1) of the 1972 Act (public access to agenda and reports before meetings).
- (6) Part VA of the 1972 Act has effect in relation to the report as if section 100C(1)(d) of that Act (public access to copies of reports for six years after meeting) were not limited to so much of the report as relates to an item during which the meeting was open to the public.

## **11 Consideration of reports or recommendations**

- (1) A body to which this section applies shall consider in accordance with this section and section 12—
  - (a) any report under section 8, and
  - (b) any written recommendation within subsection (3),sent to the body or (if a parish meeting) its chairman in connection with the audit of its accounts.
- (2) This section applies to every body subject to audit except—
  - (a) charter trustees constituted under section 246 of the 1972 Act;
  - (b) health service bodies;
  - (c) port health authorities;
  - (d) licensing planning committees;
  - (e) internal drainage boards;
  - (f) probation committees; and
  - (g) Passenger Transport Executives.
- (3) A written recommendation is within this subsection if it is made to the body concerned by an auditor and is stated in the document containing it to be one which in the auditor's opinion should be considered under this section.
- (4) The body concerned shall consider the report or recommendation at a meeting held before the end of four months beginning with the day on which the report or recommendation was sent to the body or its chairman (as the case may be).
- (5) At that meeting the body shall decide—
  - (a) whether the report requires the body to take any action or whether the recommendation is to be accepted; and
  - (b) what, if any, action to take in response to the report or recommendation.
- (6) If an auditor is satisfied that it is reasonable to allow more time for the body to comply with its duties under subsections (4) and (5) in relation to a report or recommendation, the auditor may, in relation to that report or recommendation, extend the period of four months mentioned in subsection (4).

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- (7) A period may be extended under subsection (6) whether or not it has already been extended under that subsection once or more than once.
- (8) Nothing in section 101 of the 1972 Act (delegation of functions) applies to a duty imposed on a body by this section.
- (9) This section is without prejudice to any duties (so far as they relate to the subject-matter of a report or recommendation sent to a body to which this section applies) which are imposed by or under this Act, sections 114 to 116 of the Local Government Finance Act 1988 (functions and reports of finance officers), section 5 of the Local Government and Housing Act 1989 (functions of monitoring officers) or any other enactment.

## **12 Publicity for meetings under section 11**

- (1) A meeting shall not be held for the purposes of section 11 unless, at least seven clear days before the meeting, there has been published, in a newspaper circulating in the area of the body concerned, a notice which—
  - (a) states the time and place of the meeting,
  - (b) indicates that the meeting is to be held to consider an auditor's report or recommendation (as the case may be), and
  - (c) describes the subject-matter of the report or recommendation.
- (2) The body concerned shall ensure that, as soon as practicable after the meeting—
  - (a) the auditor of its accounts is notified of the decisions made in pursuance of section 11(5); and
  - (b) a notice containing a summary of those decisions which has been approved by the auditor is published in a newspaper circulating in that body's area.
- (3) The notice required by subsection (2)(b) in relation to a meeting—
  - (a) need not summarise any decision made while the public were excluded from the meeting—
    - (i) under section 100A(2) of the 1972 Act (confidential matters);
    - (ii) in pursuance of a resolution under section 100A(4) of that Act (exempt information); or
    - (iii) in pursuance of a resolution under section 1(2) of the Public Bodies (Admission to Meetings) Act 1960 (protection of public interest);
  - but
  - (b) if sections 100C and 100D of the 1972 Act (availability for inspection after meetings of minutes, background papers and other documents) apply in relation to the meeting, shall indicate the documents in relation to the meeting which are open for inspection in accordance with those sections.
- (4) This section is without prejudice to, and in addition to, any provision made in relation to meetings of the body in question by section 10(4) to (6) or by or under the 1972 Act, the Public Bodies (Admission to Meetings) Act 1960 or any other enactment.

## **13 Additional publicity for immediate reports**

- (1) This section applies where under section 10(1) an auditor has sent an immediate report to a body or its chairman, except where the body is a health service body.



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- (2) From the time when the report is received by virtue of section 10(1), any member of the public may—
- (a) inspect the report at all reasonable times without payment,
  - (b) make a copy of it, or of any part of it, and
  - (c) require the body or chairman to supply him with a copy of it, or of any part of it, on payment of a reasonable sum.
- (3) On receiving the report by virtue of section 10(1), the body or (if a parish meeting) its chairman shall forthwith publish in one or more local newspapers circulating in the area of the body a notice which—
- (a) identifies the subject-matter of the report, and
  - (b) states that any member of the public may inspect the report and make a copy of it or any part of it between such times and at such place or places as are specified in the notice;
- and the body, if not a parish meeting, shall in addition forthwith supply a copy of the report to every member of the body.
- (4) The auditor may—
- (a) notify any person he thinks fit of the fact that he has made the report, and
  - (b) supply a copy of it or of any part of it to any person he thinks fit.
- (5) A person who has the custody of an immediate report and—
- (a) obstructs a person in the exercise of a right conferred by subsection (2)(a) or (b), or
  - (b) refuses to supply a copy of the report or of part of it (as the case may be) to a person entitled to the copy by virtue of subsection (2)(c),
- is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (6) A person who fails to comply with a requirement of subsection (3) is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (7) Nothing in this section affects the operation of section 10(4) to (6).

*Public inspection etc. and action by the auditor*

## **14 Inspection of statements of accounts and auditors' reports**

- (1) A local government elector for the area of a body subject to audit, other than a health service body, may—
- (a) inspect and make copies of any statement of accounts prepared by the body pursuant to regulations under section 27;
  - (b) inspect and make copies of any report, other than an immediate report, made to the body by an auditor; and
  - (c) require copies of any such statement or report to be delivered to him on payment of a reasonable sum for each copy.
- (2) A document which a person is entitled to inspect under this section may be inspected by him at all reasonable times and without payment.

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- (3) A person who has the custody of any such document and—
- (a) obstructs a person in the exercise of a right under this section to inspect or make copies of the document, or
  - (b) refuses to give copies of the document to a person entitled under this section to obtain them,
- is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (4) References in this section to copies of a document include references to copies of any part of it.

## **15 Inspection of documents and questions at audit**

- (1) At each audit under this Act, other than an audit of accounts of a health service body, any persons interested may—
- (a) inspect the accounts to be audited and all books, deeds, contracts, bills, vouchers and receipts relating to them, and
  - (b) make copies of all or any part of the accounts and those other documents.
- (2) At the request of a local government elector for any area to which the accounts relate, the auditor shall give the elector, or any representative of his, an opportunity to question the auditor about the accounts.
- (3) Nothing in this section entitles a person—
- (a) to inspect so much of any accounts or other document as contains personal information about a member of the staff of the body whose accounts are being audited; or
  - (b) to require any such information to be disclosed in answer to any question.
- (4) For the purposes of subsection (3), information is to be regarded as personal information about a member of a body's staff if it relates specifically to a particular individual and is available to the body for reasons connected with the fact—
- (a) that that individual holds or has held an office or employment under that body; or
  - (b) that payments or other benefits in respect of an office or employment under any other person are or have been made or provided to that individual by that body.
- (5) For the purposes of subsection (4)(b), payments made or benefits provided to an individual in respect of an office or employment include any payment made or benefit provided to him in respect of his ceasing to hold the office or employment.

## **16 Right to make objections at audit**

- (1) At each audit of accounts under this Act, other than an audit of accounts of a health service body, a local government elector for an area to which the accounts relate, or any representative of his, may attend before the auditor and (in accordance with subsection (2)) make objections—
- (a) as to any matter in respect of which the auditor could take action under section 17 or 18; or
  - (b) as to any other matter in respect of which the auditor could make a report under section 8.

- (2) No objection may be made under subsection (1) unless the auditor has received written notice of the proposed objection and of the grounds on which it is to be made.
- (3) An elector sending a notice to an auditor for the purposes of subsection (2) shall at the same time send a copy of the notice to the body whose accounts are being audited.

## **17 Declaration that item of account is unlawful**

- (1) Where—
  - (a) it appears to the auditor carrying out an audit under this Act, other than an audit of accounts of a health service body, that an item of account is contrary to law, and
  - (b) the item is not sanctioned by the Secretary of State,the auditor may apply to the court for a declaration that the item is contrary to law.
- (2) On an application under this section the court may make or refuse to make the declaration asked for, and if it makes the declaration then, subject to subsection (3), it may also—
  - (a) order that any person responsible for incurring or authorising expenditure declared unlawful shall repay it in whole or in part to the body in question and, where there are two or more such persons, that they shall be jointly and severally liable to do so;
  - (b) if the expenditure declared unlawful exceeds £2,000 and the person responsible for incurring or authorising it is, or was at the time of his conduct in question, a member of a local authority, order him to be disqualified for being a member of a local authority for a specified period; and
  - (c) order rectification of the accounts.
- (3) The court shall not make an order under subsection (2)(a) or (b) if satisfied that the person responsible for incurring or authorising the expenditure acted reasonably or in the belief that the expenditure was authorised by law, and in any other case shall have regard to all the circumstances, including that person's means and ability to repay the expenditure or any part of it.
- (4) A person who has made an objection under section 16(1)(a) and is aggrieved by a decision of an auditor not to apply for a declaration under this section may—
  - (a) not later than six weeks after being notified of the decision, require the auditor to state in writing the reasons for his decision, and
  - (b) appeal against the decision to the court;and on such an appeal the court has the same powers in relation to the item of account to which the objection relates as if the auditor had applied for the declaration.
- (5) On an application or appeal under this section relating to the accounts of a body, the court may make such order as it thinks fit for the payment by the body of expenses incurred, in connection with the application or appeal, by—
  - (a) the auditor,
  - (b) the person to whom the application or appeal relates, or
  - (c) the person by whom the appeal is brought.
- (6) The High Court and the county courts have jurisdiction for the purposes of this section.
- (7) In this section “local authority” includes—

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- (a) the Common Council;
- (b) the Council of the Isles of Scilly;
- (c) the Broads Authority;
- (d) the Navigation Committee of the Broads Authority;
- (e) a National Park authority;
- (f) a police authority established under section 3 of the Police Act 1996; and
- (g) the Service Authority for the National Crime Squad.

## **18 Recovery of amount not accounted for etc**

- (1) Where it appears to the auditor carrying out an audit under this Act, other than an audit of accounts of a health service body—
  - (a) that any person has failed to bring into account a sum which should have been brought into account and that the failure has not been sanctioned by the Secretary of State, or
  - (b) that a loss has been incurred or deficiency caused by the wilful misconduct of any person,
 the auditor shall certify that the sum, or the amount of the loss or deficiency, is due from that person.
- (2) Subject to subsections (4) and (8), both the auditor and the body concerned (or, if it is a parish meeting, its chairman) may recover for the benefit of the body a sum or amount certified under this section as due; and if the sum or amount is certified to be due from two or more persons, they shall be jointly and severally liable for it.
- (3) A person aggrieved by a decision of an auditor to certify under this section that a sum or amount is due from him may—
  - (a) not later than six weeks after being notified of the decision, require the auditor to state in writing the reasons for his decision, and
  - (b) appeal against the decision to the court.
- (4) On an appeal under subsection (3) the court may—
  - (a) confirm, vary or quash the decision, and
  - (b) give any certificate which the auditor could have given.
- (5) A person who has made an objection under section 16(1)(a) and is aggrieved by a decision of an auditor not to certify under this section that a sum or amount is due from another person may—
  - (a) not later than six weeks after being notified of the decision, require the auditor to state in writing the reasons for his decision, and
  - (b) appeal against the decision to the court.
- (6) On an appeal under subsection (5) the court may—
  - (a) confirm or quash the decision, and
  - (b) give any certificate which the auditor could have given.
- (7) If a certificate under this section relates to a loss or deficiency caused by the wilful misconduct of a person who is, or was at the time of the misconduct, a member of a local authority and the amount certified to be due from him exceeds £2,000, that person shall be disqualified for being a member of a local authority for five years beginning—

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- (a) on the ordinary date on which the period for bringing an appeal against a decision to give the certificate expires, or
  - (b) if such an appeal is brought, on the date on which the appeal is finally disposed of or abandoned or fails for non-prosecution.
- (8) A sum or amount certified under this section to be due from any person is payable within 14 days after the date of issue of the certificate or, if an appeal is brought, within 14 days after the appeal is finally disposed of or abandoned or fails for non-prosecution.
- (9) In proceedings for the recovery of a sum or amount due under this section—
- (a) a certificate signed by an auditor appointed by the Commission stating that the sum or amount is due from a person specified in the certificate to a body specified there is conclusive evidence of that fact; and
  - (b) a certificate purporting to be so signed shall be taken to have been so signed unless the contrary is proved.
- (10) On an appeal under this section relating to the accounts of a body, the court may make such order as it thinks fit for the payment by that body of expenses incurred in connection with the appeal by—
- (a) the auditor,
  - (b) the person to whom the appeal relates, or
  - (c) the person by whom the appeal is brought.
- (11) Any expenses incurred by an auditor in recovering a sum or amount certified under this section to be due in connection with the accounts of a body, so far as not recovered from any other source, are recoverable from that body unless the court otherwise directs.
- (12) Subsections (6) and (7) of section 17 also apply for the purposes of this section.

*Prevention of unlawful expenditure etc.*

## **19 Health service bodies: referral to Secretary of State**

If the auditor for the time being of the accounts of a health service body has reason to believe that the body or an officer of the body—

- (a) is about to make, or has made, a decision which involves or would involve the incurring of expenditure which is unlawful, or
- (b) is about to take, or 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 refer the matter forthwith to the Secretary of State.

## **20 Other bodies: prohibition orders**

- (1) The auditor for the time being of the accounts of a body subject to audit other than a health service body may issue an order under this section (a “prohibition order”) if he has reason to believe that the body or an officer of the body—
- (a) is about to make or has made a decision which involves or would involve the body incurring expenditure which is unlawful;
  - (b) is about to take or has taken a course of action which, if pursued to its conclusion, would be unlawful and likely to cause a loss or deficiency; or

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- (c) is about to enter an item of account, the entry of which is unlawful.
- (2) For the purposes of this section and section 22, the actions of—
  - (a) a committee or sub-committee of a body, or
  - (b) any other person (other than an officer) authorised to act on behalf of the body,
 are to be treated as the actions of the body itself.
- (3) A prohibition order is an order which—
  - (a) is addressed to the body or officer concerned;
  - (b) specifies the paragraph of subsection (1) which is relevant and the decision, course of action or item of account to which the order relates;
  - (c) specifies the date on which (subject to subsection (6)) the order is to take effect, which must not be earlier than the date of service of a copy of the order in accordance with paragraph (a) or (as the case may be) paragraphs (a) and (b) of subsection (5); and
  - (d) requires the body or officer concerned to desist from making or implementing the decision, taking or continuing to take the course of action or entering the item of account in question (as the case may be).
- (4) Where two or more auditors are appointed in relation to the accounts of any body—
  - (a) the power to issue a prohibition order may be exercised by the auditors acting jointly or by such one of them as they may determine; and
  - (b) in relation to such an order, references in subsections (5) and (6) to the auditor are references to the auditor or auditors by whom the order is issued.
- (5) A copy of a prohibition order—
  - (a) shall be served on the body to which, or to an officer of which, it is addressed;
  - (b) in the case of an order addressed to an officer, shall also be served on him; and
  - (c) may be served on such other person or persons as the auditor considers appropriate.
- (6) A prohibition order does not have effect unless, not later than the end of the period of seven days beginning on the date of service referred to in subsection (3)(c), the auditor serves on the body concerned and on any officer on whom a copy of the order was served under subsection (5)(b), a statement of the auditor’s reasons for the belief referred to in subsection (1).
- (7) Where this section requires a copy of an order or statement to be served on an officer of a body, it shall be served on him by addressing it to him and delivering it to him or leaving it at, or sending it by post to, the office at which he is employed.
- (8) A prohibition order may at any time be revoked (but not varied) by the person who is for the time being the auditor in relation to the accounts of the body to which, or to an officer of which, the order was addressed.

## **21 Restriction on power to issue prohibition orders**

- (1) Where—
  - (a) a report is made under section 114(2) of the Local Government Finance Act 1988 (“the 1988 Act”) (chief finance officer’s report on unlawful expenditure etc.), and
  - (b) copies of the report are sent in accordance with section 114(4) of the 1988 Act,

no prohibition order may be issued during the relevant period as regards any decision, course of action or item of account which led to the report being made.

- (2) For the purposes of subsection (1) the relevant period is the period—
  - (a) beginning with the day on which copies of the report are sent, and
  - (b) ending with the day (if any) on which the body’s consideration of the report under section 115(2) of the 1988 Act begins.
- (3) If the body fails to hold the meeting to consider the report within the time limit specified in section 115(3) of the 1988 Act that failure is immaterial for the purposes of subsection (2)(b) above.

## **22 Effect of and appeals against prohibition orders**

- (1) While a prohibition order has effect, it is not lawful for the body concerned or any officer of that body to make or implement the decision, to take or continue to take the course of action or to enter the item of account to which the order relates (as the case may be).
- (2) A prohibition order—
  - (a) takes effect, subject to subsection (6) of section 20, on the date specified in the order in accordance with subsection (3)(c) of that section; and
  - (b) continues to have effect, subject to any order or decision of the High Court on an appeal under subsection (3) below, until revoked under section 20(8).
- (3) Not later than 28 days after service under section 20(6) of a statement of reasons relating to a prohibition order, the body concerned (but not an officer of that body) may appeal against the order to the High Court in accordance with rules of court.
- (4) On an appeal against a prohibition order under subsection (3), the High Court may make such order as it thinks fit for the payment by the body concerned of expenses incurred by the auditor in connection with the appeal.
- (5) Any expenses reasonably incurred by the auditor in or in connection with the issue of a prohibition order are recoverable by him from the body concerned.
- (6) In this section “the body concerned”, in relation to a prohibition order, means the body to which, or to any officer of which, the order is addressed.

## **23 Loss etc. caused by prohibition orders**

- (1) Where—
  - (a) before a prohibition order is issued, a body enters into a contract to dispose of or acquire an interest in land, and
  - (b) before the disposal or acquisition is completed, a prohibition order takes effect as a result of which it is unlawful for the body to complete the disposal or acquisition,the existence of the prohibition order does not prejudice any remedy in damages which may be available to any person by reason of the body’s failure to complete the contract.
- (2) No action lies against an auditor in respect of loss or damage alleged to have been caused by reason of the issue of a prohibition order which was issued in good faith; but that does not affect the right of a court to award costs against an auditor on an appeal under section 22(3).

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## **24 Power of auditor to apply for judicial review**

- (1) Subject to section 31(3) of the Supreme Court Act 1981 (no application for judicial review without leave) the auditor appointed in relation to the accounts of a body other than a health service body may make an application for judicial review with respect to—
  - (a) any decision of that body, or
  - (b) any failure by that body to act,which it is reasonable to believe would have an effect on the accounts of that body.
- (2) The existence of the powers conferred on an auditor under this Act is not a ground for refusing an application falling within subsection (1) (or an application for leave to make such an application).
- (3) On an application for judicial review made as mentioned in subsection (1), the court may make such order as it thinks fit for the payment, by the body to whose decision the application relates, of expenses incurred by the auditor in connection with the application.

### *Miscellaneous*

## **25 Extraordinary audit**

- (1) The Commission may direct an auditor or auditors appointed by it to hold an extraordinary audit of the accounts of a body subject to audit—
  - (a) if it appears to the Commission to be desirable to do so in consequence of a report made under this Act by an auditor or for any other reason; or
  - (b) where the accounts are not those of a health service body, if an application for such an audit is made by a local government elector for the area of the body in question.
- (2) If it appears to the Secretary of State that it is desirable in the public interest that there should be an extraordinary audit of the accounts of a body subject to audit he may require the Commission to direct such an audit by an auditor or auditors appointed by it.
- (3) The following provisions apply to an extraordinary audit under this section as they apply to an ordinary audit under this Act—
  - (a) in relation to the accounts of a body other than a health service body, sections 3, 5, 6, 8 to 13 and 16 to 18; and
  - (b) in relation to the accounts of a health service body, sections 3, 5, 6 and 8 to 10.
- (4) An extraordinary audit under this section may be held after three clear days' notice in writing to be given to the body whose accounts are to be audited or (if it is a parish meeting) to be given to its chairman.
- (5) The expenditure incurred in holding an extraordinary audit of the accounts of any body—
  - (a) shall be defrayed in the first instance by the Commission, but
  - (b) may be recovered by the Commission, if it thinks fit, in whole or part from the body concerned.



## **26 Audit of accounts of officers**

- (1) Where an officer of a body subject to audit receives money or other property—
  - (a) on behalf of that body, or
  - (b) for which he ought to account to that body,the accounts of the officer shall be audited by the auditor of the accounts of that body, and the provisions mentioned in subsection (2) apply with the necessary modifications to the accounts and audit.
- (2) Those provisions are—
  - (a) in the case of an officer of a health service body, sections 2(1), 5 to 10 and 25;
  - (b) in any other case, sections 2(1), 5 to 10, 13 to 18, 25 and 27.

## **27 Accounts and audit regulations**

- (1) The Secretary of State may by regulations applying to bodies subject to audit other than health service bodies make provision with respect to—
  - (a) the keeping of accounts;
  - (b) the form, preparation and certification of accounts and of statements of accounts;
  - (c) the deposit of the accounts of any body at the offices of the body or at any other place;
  - (d) the publication of information relating to accounts and the publication of statements of accounts;
  - (e) the exercise of any rights of objection or inspection conferred by section 14, 15 or 16 and the steps to be taken by any body for informing local government electors for the area of that body of those rights.
- (2) Regulations under this section may make different provision in relation to bodies of different descriptions.
- (3) Before making any regulations under this section the Secretary of State shall consult—
  - (a) the Commission,
  - (b) such associations of local authorities as appear to him to be concerned, and
  - (c) such bodies of accountants as appear to him to be appropriate.
- (4) If a person without reasonable excuse contravenes a provision of regulations under this section and the regulations declare that contravention of the provision is an offence, that person is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (5) Any expenses incurred by an auditor in connection with proceedings in respect of an offence under subsection (4) alleged to have been committed in relation to the accounts of any body, so far as not recovered from any other source, are recoverable from that body.

## **28 Certification of claims, returns etc**

- (1) The Commission shall, if so required by the body concerned, make arrangements—
  - (a) for certifying claims and returns in respect of grants or subsidies made or paid by any Minister of the Crown or public authority to any body subject to audit;

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- (b) for certifying any account submitted by any such body to any such Minister with a view to obtaining payment under a contract between that body and the Minister;
- (c) for certifying the body's calculation under paragraph 5(6)(a) of Schedule 8 to the Local Government Finance Act 1988 of the amount of its non-domestic rating contribution for a financial year, and for certifying the amount calculated; or
- (d) for certifying any return by the body which, by or under any enactment, is required or authorised to be certified by the body's auditor or under arrangements made by the Commission;

and in paragraph (a) "public authority" means a body established by or under the Treaties or by or under any enactment.

- (2) The Commission shall charge the body concerned such fees for services provided under this section as will cover the full cost of providing them.

## **29 Agreed audit of accounts**

- (1) The Commission may, with the consent of the Secretary of State and by agreement with the body concerned, undertake the audit of the accounts of any body which—
  - (a) appears to the Secretary of State to be connected with local government or the National Health Service; and
  - (b) is not a body subject to audit.
- (2) An audit carried out under this section shall be carried out in such manner as the Commission and the body concerned may agree and references in this Part or Part III to an audit carried out under this Act do not include an audit carried out under this section.
- (3) Subsection (2) is without prejudice to any other statutory provisions which apply to an audit under this section.
- (4) The Commission shall charge the body such fees for services provided under this section as will cover the full cost of providing them.

## **30 Passenger Transport Executives**

- (1) In relation to a Passenger Transport Executive this Act applies with the following modifications—
  - (a) under section 3(3) the Commission shall consult the relevant authority instead of the Executive;
  - (b) in sections 14(1), 15(2), 16(1), 25(1)(b) and 27(1)(e) references to a local government elector for an area such as is mentioned there are to be read as references to a local government elector for the area of the relevant authority;
  - (c) in section 10, subsections (1) and (3) apply in relation to the relevant authority as well as the Executive, and subsections (4) to (6) apply only to the relevant authority;
  - (d) in section 13, subsections (2) and (3) apply in relation to the relevant authority as well as the Executive, but the reference in subsection (3) to one or more local newspapers circulating in the area of the body is to be read as a reference to one or more such newspapers circulating in the area of the relevant authority;

- (e) the notice required to be given by section 25(4) shall be given to the relevant authority as well as the Executive.
- (2) Section 14(1)(a) of the Transport Act 1968 (accounts and other records of Passenger Transport Executives) is subject to any regulations under section 27.
- (3) In subsection (1) “the relevant authority”, in relation to a Passenger Transport Executive, means the Passenger Transport Authority for the area for which the Executive is established.

### **31 Companies related to Passenger Transport Executives**

- (1) Subject to subsection (2), where a Passenger Transport Executive have a subsidiary they shall exercise their control over it so as to ensure that it appoints only auditors who—
  - (a) are approved by the Commission for appointment as the subsidiary’s auditors, and
  - (b) are qualified for the appointment in accordance with section 25 of the Companies Act 1989.
- (2) Where a company would, if an Executive and any other body or bodies subject to audit were a single body corporate, be a subsidiary of that body corporate—
  - (a) subsection (1) does not apply, but
  - (b) it is the joint duty of the Executive and the other body or bodies concerned to exercise such control over the company as the Executive are required by subsection (1) to exercise over a subsidiary of theirs.
- (3) In this section “subsidiary” means a subsidiary within the meaning of section 736 of the Companies Act 1985.

### **32 Documents relating to police authorities etc**

- (1) The Commission shall send to the Secretary of State a copy of any report of which a copy is sent to the Commission under section 10(2) and which relates to—
  - (a) a police authority established under section 3 of the Police Act 1996, or
  - (b) the Service Authority for the National Crime Squad.
- (2) If it appears to the Commission appropriate to do so, it may send to the Secretary of State a copy of any document which—
  - (a) relates to one or more police authorities established under section 3 of the Police Act 1996 and has been sent (or a copy of which has been sent) by the Commission to such an authority, or
  - (b) relates to the Service Authority for the National Crime Squad and has been sent (or a copy of which has been sent) by the Commission to that Authority.

### PART III

#### STUDIES, PERFORMANCE STANDARDS AND OTHER FUNCTIONS

##### *Studies and related functions*

### **33 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—
  - (a) for improving economy, efficiency and effectiveness in the provision of local authority services and of other services provided by bodies subject to audit; and
  - (b) for improving the financial or other management of bodies subject to audit.
- (2) The studies which the Commission is required to undertake or promote under subsection (1) include, in particular—
  - (a) studies designed to enable the Commission to determine what directions it should give under section 44; and
  - (b) studies of information published in pursuance of directions under that section which are designed to enable the Commission to determine, in relation to each financial year, what comparative information to publish itself about the standards of performance achieved by bodies which are relevant bodies for the purposes of that section.
- (3) In undertaking or promoting studies under subsection (1) relating to a health service body (services of which are excluded from studies under section 34) the Commission may take into account the implementation by the body of—
  - (a) any particular statutory provision or provisions, and
  - (b) any directions or guidance given by the Secretary of State (whether pursuant to any such provision or otherwise);but this subsection does not entitle the Commission to question the merits of the policy objectives of the Secretary of State.
- (4) The Commission may undertake or promote other studies relating to the provision by bodies subject to audit of their services besides the studies referred to in subsection (1) and section 34.
- (5) The Commission shall publish or otherwise make available its recommendations and the result of any studies under this section and, in the case of studies relating to a health service body, shall, on request, provide the Comptroller and Auditor General with all material relevant to the studies.
- (6) Before undertaking or promoting any study under this section, other than a study within paragraph (a) or (b) of subsection (2), the Commission shall—
  - (a) consult such associations of local authorities or other bodies subject to audit as appear to it to be concerned;
  - (b) consult such associations of employees as appear to it to be appropriate; and
  - (c) in the case of any health service bodies, also consult the Secretary of State and the Comptroller and Auditor General.

### **34 Reports on impact of statutory provisions etc**

- (1) In addition to the studies referred to in section 33(1), the Commission shall undertake or promote studies designed to enable it to prepare reports as to the impact—
  - (a) of the operation of any particular statutory provision or provisions, or
  - (b) of any directions or guidance given by a Minister of the Crown (whether pursuant to any such provision or otherwise),on economy, efficiency and effectiveness in the provision of local authority services and of other services provided by bodies subject to audit other than health service bodies, or on the financial management of such bodies.
- (2) The Commission shall publish or otherwise make available its report of the results of any study under this section, and shall send a copy of any such report to the Comptroller and Auditor General.
- (3) Where the Comptroller and Auditor General has received a copy of any such report he may, subject to subsection (4), require the Commission to provide him with any information obtained by it in connection with the preparation of the report, and for that purpose the Commission shall permit any person authorised by him to inspect and make copies of any documents containing such information.
- (4) No information shall be required by the Comptroller and Auditor General under this section in respect of any particular body.
- (5) The Comptroller and Auditor General shall from time to time lay before the House of Commons a report of any matters which, in his opinion, arise out of studies of the Commission under this section and ought to be drawn to the attention of that House.
- (6) Before undertaking or promoting any study under this section the Commission shall consult—
  - (a) the Comptroller and Auditor General;
  - (b) any Minister of the Crown who appears to it to be concerned;
  - (c) such associations of local authorities or other bodies subject to audit as appear to it to be concerned; and
  - (d) such associations of employees as appear to it to be appropriate.

### **35 Studies at request of bodies subject to audit**

- (1) The Commission may, at the request of the body concerned, promote or undertake studies designed to improve economy, efficiency and effectiveness in the management or operations of any body subject to audit.
- (2) Before making the request the body shall consult—
  - (a) such associations of employees, or
  - (b) in the case of a health service body, such other organisations,as appear to it to be appropriate.
- (3) The Commission shall charge the body such fees for services provided under this section as will cover the full cost of providing them.

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### 36 Studies at request of educational bodies

- (1) The Commission may promote or undertake studies designed to improve economy, efficiency and effectiveness in the management or operations of a body in the first column in the Table below if requested to do so by the body (or one of the bodies) specified in relation to it in the second column—

<i>Subject of study</i>	<i>Requesting body</i>
A higher education funding council.	The council.
The governing body of an institution within the higher education sector.	The governing body or the higher education funding council.
A funding agency under Part I of the Education Act 1994.	The agency.
The governing body of an institution receiving financial support under Part I of the Education Act 1994.	The governing body or the appropriate funding agency.
A further education funding council.	The council.
The governing body of an institution within the further education sector.	The governing body or the appropriate further education funding council.
The Funding Agency for Schools.	The agency.
The Schools Funding Council for Wales.	The council.
The governing body of a grant-maintained school.	The governing body or the funding authority.

- (2) The Commission may, at the request of a higher education funding council or a further education funding council, give the council advice in connection with the discharge of the council's functions under section 124B(2)(b) of the Education Reform Act 1988 or paragraph 18(2)(b) of Schedule 7 to that Act.
- (3) The Commission may, at the request of a higher education corporation, a further education corporation or the governing body of a grant-maintained school—
- (a) advise them in connection with the appointment of persons to audit their accounts; and
  - (b) arrange for their accounts for any financial year to be audited by such of the Commission's officers as the corporation or governing body may appoint.
- (4) In subsection (3)—
- (a) “higher education corporation” and “further education corporation” have the same meaning as in the Further and Higher Education Act 1992, and
  - (b) references to the accounts of a higher education corporation include references to any statement of accounts prepared by the corporation under paragraph 18 of Schedule 7 to the Education Reform Act 1988.
- (5) The Commission shall charge the body at whose request any services are provided under this section such fees as will cover the full cost of providing them.
- (6) This section shall be construed as one with the Education Act 1996; and references in any enactment to the Education Acts include a reference to this section.

### **37 Social services studies for Secretary of State**

- (1) At the request of the Secretary of State, the Commission may assist the Secretary of State in any study designed to improve economy, efficiency, effectiveness and quality of performance in the discharge of social services functions by local authorities.
- (2) In this section “social services functions” means—
  - (a) any function under any enactment for the time being specified in Schedule 1 to the Local Authority Social Services Act 1970; and
  - (b) any function for the time being designated by an order made by the Secretary of State under section 2(2) of the 1970 Act as being appropriate for discharge through a local authority’s social services committee.
- (3) In the following provisions of this section “study” means a study of a description mentioned in subsection (1).
- (4) If the Commission requires—
  - (a) a local authority included in a study, or
  - (b) an 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.
- (5) If the Commission requires a 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.
- (6) Any information obtained under a requirement under subsection (4) or (5) may be disclosed by the Commission to the Secretary of State for the purposes of any functions of his which are connected with the discharge of social services functions by local authorities.
- (7) In subsections (4) and (5) “authorised person” means a person authorised by the Commission for the purposes of this section.
- (8) Any report of a study in which the Commission assists the Secretary of State shall be published by the Secretary of State in conjunction with the Commission.
- (9) The Commission shall not provide assistance under subsection (1) unless before it does so the Secretary of State has agreed to pay the Commission an amount equal to the full costs incurred by the Commission in providing the assistance.

### **38 Benefit administration studies for 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 is requested to conduct, or assist the Secretary of State in conducting, under subsection (1).
- (3) If the Commission requires—

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- (a) a local authority included in a study, or
- (b) an 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 requires a 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) 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) “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 it does 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.

### **39 Social security references and reports to Secretary of State**

- (1) The Commission or an auditor may refer to the Secretary of State any matter arising from an audit or study under 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.
- (2) The Commission may send to the Secretary of State a copy of any report of which a copy is sent to the Commission under section 10(2) and which contains observations on the administration by a local authority of housing benefit or council tax benefit.

### **40 Studies relating to registered social landlords**

- (1) The Corporation and the Commission may agree one or more programmes of comparative studies designed to enable the Commission to make recommendations for improving economy, efficiency and effectiveness of registered social landlords.
- (2) Where the Corporation and the Commission fail to agree a programme proposed by either of them, either of them may refer the matter to the Secretary of State who may direct that the programme be carried out either without modifications or with modifications specified in the direction.
- (3) Where a programme is agreed or is directed to be carried out, the Commission shall ensure that studies giving effect to the programme are carried out by it or on its behalf.



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- (4) It shall be a term of every such programme that the Corporation make good to the Commission the full costs incurred by the Commission in carrying out the programme.
- (5) The Commission shall publish reports on the studies carried out under this section.
- (6) Before publishing any such report the Commission shall show a draft of it to the Corporation and shall consider whether to revise the draft in the light of the comments made by the Corporation.

#### **41 Provisions supplementary to section 40**

- (1) The Commission may, if authorised to do so by the Corporation—
  - (a) require a registered social landlord, or any officer or member of a registered social landlord, to supply such information as the Commission may require for the purposes of any study under section 40; and
  - (b) require a registered social landlord included in any such study to make available for inspection such documents as are reasonably required for the purposes of the study.
- (2) The Commission may require the information to be supplied, or the documents to be made available, to the Commission or to a person authorised by the Commission for the purposes of this section.
- (3) A person who without reasonable excuse fails to comply with a requirement under this section commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (4) Information obtained by the Commission, or by a person acting on behalf of the Commission, in the course of a study under section 40 may be disclosed by the Commission to the Corporation.

#### **42 Consultancy services relating to audit of accounts of registered social landlords**

- (1) The Commission may provide the Corporation with consultancy services relating to the audit of accounts of registered social landlords.
- (2) The Commission may recover from the Corporation such costs incurred in providing the services as may be agreed by the Corporation.

#### **43 Sections 40 to 42: interpretation**

In sections 40 to 42 “the Corporation” and “registered social landlord” have the same meaning as in Part I of the Housing Act 1996.

*Performance standards of local authorities etc.*

#### **44 Publication of information as to standards of performance**

- (1) The Commission shall give such directions as it thinks fit for requiring relevant bodies to publish such information relating to their activities in any financial year as will, in the Commission’s opinion, facilitate the making of appropriate comparisons (by reference to the criteria of cost, economy, efficiency and effectiveness) between—

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- (a) the standards of performance achieved by different relevant bodies in that financial year; and
  - (b) the standards of performance achieved by such bodies in different financial years.
- (2) Where a relevant body is required by a direction under this section to publish information in relation to any financial year, it shall—
  - (a) make such arrangements for collecting and recording the information as secure that the information is available for publication and, so far as practicable, that everything published in pursuance of the direction is accurate and complete;
  - (b) within the period of nine months beginning with the end of that financial year, publish the information in accordance with the direction and by one of the methods permitted by section 45; and
  - (c) keep a document containing any information published in pursuance of the direction available for inspection by local government electors for its area.
- (3) The Secretary of State may by order vary the period for the time being specified in paragraph (b) of subsection (2) so as to fix the latest time for the publication of information in accordance with that paragraph at any such time, within the period of nine months after the end of the financial year in question, as may be specified in the order.
- (4) A local government elector for the area of a relevant body may—
  - (a) at all reasonable times and without payment, inspect and make copies of the whole or any part of a document kept available for inspection under subsection (2)(c) by the body; and
  - (b) require copies of the whole or part of any such document to be delivered to him on payment of a reasonable sum for each copy.
- (5) A person who has custody of a document kept available for inspection under subsection (2)(c) and—
  - (a) obstructs a person in the exercise of his rights under subsection (4), or
  - (b) refuses to comply with a requirement under subsection (4)(b),is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.
- (6) In this section and sections 45 and 46 “relevant body” means any body subject to audit other than one within subsection (7).
- (7) Subject to section 47, the following are not relevant bodies for the purposes of this section and sections 45 and 46—
  - (a) parish and community councils and any parish meeting of a parish not having a separate parish council;
  - (b) charter trustees constituted under section 246 of the 1972 Act;
  - (c) health service bodies;
  - (d) port health authorities;
  - (e) licensing planning committees;
  - (f) internal drainage boards;
  - (g) probation committees; and
  - (h) Passenger Transport Executives.

#### **45 Permitted methods of publishing information under section 44**

- (1) The permitted methods of publication referred to in section 44(2)(b) are as follows.
- (2) The relevant body may publish the information in a newspaper printed for sale and circulating in its area.
- (3) If the relevant body ensures that the distribution condition is satisfied with respect to the information, it may publish the information in a newspaper or periodical publication which is produced and distributed by another person (other than a local authority company) and which is free of charge to the recipient.
- (4) For the purposes of subsection (3), a relevant body ensures that the distribution condition is satisfied with respect to information if—
  - (a) the body takes all reasonable steps to secure that a copy of a publication containing the information is distributed to each dwelling in its area; and
  - (b) in a case where the body considers that the information is of concern to persons carrying on business in its area, the body takes such steps as it considers reasonable and practicable to secure that a copy of a publication containing the information is distributed to business premises in its area.
- (5) For the purposes of subsection (3) a local authority company is any company under the control of a local authority; and section 68(1) of the Local Government and Housing Act 1989 (company under control of local authority) has effect for the purposes of this subsection as it has effect for the purposes of Part V of that Act.

#### **46 Directions under section 44**

- (1) A direction under section 44 requiring the publication of information shall—
  - (a) identify the financial year or years in relation to which the information is to be published;
  - (b) specify or describe the activities to which the information is to relate; and
  - (c) make provision as to the matters to be contained in the information and as to the form in which it is to be published.
- (2) A direction under section 44—
  - (a) may be given so as to apply either to all relevant bodies or to all such bodies as are of a description specified in the direction; and
  - (b) may be varied or revoked by any subsequent direction under that section.
- (3) Before giving a direction under section 44 which imposes a new requirement on a relevant body as to the publication of any information the Commission shall consult such associations of relevant bodies and such other persons as it thinks fit.
- (4) A direction under section 44 imposing a new requirement on a relevant body as to the publication of any information shall not be given any later than the 31st December in the financial year which precedes that in relation to which the information is to be published.
- (5) Where the Commission gives a direction under section 44, it shall—
  - (a) publish the direction in such manner as it considers appropriate for bringing it to the attention of members of the public; and
  - (b) send a copy of the direction to every relevant body on whom duties are imposed by virtue of the direction.

- (6) References in this section to the imposition of a new requirement on a relevant body as to the publication of information are references to—
- (a) the imposition of any requirement by the first direction under section 44 to apply to that body; or
  - (b) any subsequent extension of, or addition to, either—
    - (i) the matters to be contained in the information which that body is required to publish in relation to any financial year in pursuance of directions under section 44; or
    - (ii) the activities to which any such information is to relate.

#### **47 Application to parish and community councils and charter trustees**

- (1) The Secretary of State may by order provide for sections 44 to 46 to have effect as if—
- (a) parish and community councils in England and Wales, and
  - (b) charter trustees constituted under section 246 of the 1972 Act,
- were relevant bodies for the purposes of those sections.
- (2) The power to make an order under this section includes power—
- (a) to make such incidental, consequential, transitional or supplementary provision as the Secretary of State thinks necessary or expedient; and
  - (b) to make different provision for different cases, including different provision for different localities and for different bodies.

### **PART IV**

#### **GENERAL**

##### *Information etc.*

#### **48 Provision of information and documents to Commission**

- (1) Without prejudice to any other provision of this Act, the Commission may require—
- (a) any body subject to audit, and
  - (b) any officer or member of such a body,
- to provide the Commission or a 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 Act of the Commission or of that person, including the carrying out of any study under section 33 or 34.
- (2) Subsection (1) does not apply to functions under section 36.
- (3) For the purpose of assisting the Commission to maintain proper standards in the auditing of the accounts of a body subject to audit the Commission may require that body to make available for inspection by or on behalf of the Commission—
- (a) the accounts concerned; and
  - (b) such other documents relating to the body as might reasonably be required by an auditor for the purposes of the audit.

- (4) A person who without reasonable excuse fails to comply with a requirement of the Commission under subsection (1)(b) is guilty of an offence and liable on summary conviction—
- (a) to a fine not exceeding level 3 on the standard scale, and
  - (b) to an additional fine not exceeding £20 for each day on which the offence continues after conviction for that offence.
- (5) Any expenses incurred by the Commission in connection with proceedings for an offence under subsection (4) alleged to have been committed by an officer or member of a body, so far as not recovered from any other source, are recoverable from that body.

#### **49 Restriction on disclosure of information**

- (1) No information relating to a particular body or other person and obtained by the Commission or an auditor, or by a person acting on behalf of the Commission or an auditor, pursuant to any provision of this Act or in the course of any audit or study under any such provision shall be disclosed except—
- (a) with the consent of the body or person to whom the information relates;
  - (b) for the purposes of any functions of the Commission or an auditor under this Act;
  - (c) in the case of a health service body, for those purposes or for the purposes of the functions of the Secretary of State and the Comptroller and Auditor General under the National Health Service Act 1977;
  - (d) for the purposes of the functions of the Secretary of State relating to social security;
  - (e) in accordance with section 37(6) or 41(4); or
  - (f) for the purposes of any criminal proceedings.
- (2) References in subsection (1) to studies and to functions of the Commission do not include studies or functions under section 36.
- (3) A person who discloses information in contravention of subsection (1) is guilty of an offence and liable—
- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both; or
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

#### **50 Supply of benefit information to Commission**

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 function of the Commission.

#### **51 Publication of information by the Commission**

- (1) Subject to subsections (2) to (4), the Commission may publish such information as it thinks fit with respect to any of the following—
- (a) a contravention by a body subject to audit of any obligation imposed on that body by virtue of section 44(2);

- (b) the making by an auditor of a report under section 8 to any such body, the subject-matter of any such report and the decision made and other action taken by any such body in response to the receipt of any such report or to anything contained in it;
  - (c) a contravention by any such body of regulations made under section 27.
- (2) The information that may be published by virtue of subsection (1)(b) does not include—
- (a) information with respect to a report made to a health service body or to any decision or other action by such a body; or
  - (b) information excluded under subsection (3)(a) of section 12 from any notice published for the purposes of subsection (2)(b) of that section.
- (3) Before publishing information under this section relating to—
- (a) the conduct or decisions of a body subject to audit, or
  - (b) a report made to such a body,
- the Commission shall notify the body of its proposal to publish the information.
- (4) Information published under this section shall be published in such manner as the Commission considers appropriate for bringing the information to the attention of those members of the public who may be interested.

### *Supplementary*

## **52 Orders and regulations**

- (1) Any power conferred on the Secretary of State by this Act to make orders or regulations is exercisable by statutory instrument.
- (2) No order shall be made under paragraph 9(2) of Schedule 1 unless a draft of the order has been approved by a resolution of the House of Commons.
- (3) In any other case, an order or regulations contained in a statutory instrument made by the Secretary of State under this Act shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## **53 Interpretation**

- (1) In this Act—

“the 1972 Act” means the Local Government Act 1972;

“allotted sum” has the same meaning as in section 15 of the National Health Service and Community Care Act 1990;

“auditor”, in relation to the accounts of any body, means (except in section 31(1)) the person or any of the persons appointed by the Commission to act as auditor in relation to those accounts and, to the extent provided by section 3(11), includes a person assisting an auditor under arrangements approved under section 3(9);

“body subject to audit” means a body whose accounts are required to be audited in accordance with this Act;

“the Commission” means the Audit Commission for Local Authorities and the National Health Service in England and Wales;

“the health service” has the same meaning as in the National Health Service Act 1977;

“health service body” means—

(a) a body specified in section 98(1) of the National Health Service Act 1977, or

(b) the members of a recognised fund-holding practice;

“recognised fund-holding practice” is to be read in accordance with section 14 of the National Health Service and Community Care Act 1990;

“statutory provision” means any provision contained in or having effect under any enactment.

(2) Subject to paragraph 11(5) of Schedule 1, section 270 of the 1972 Act (general interpretation) applies for the interpretation of this Act.

(3) A reference in this Act to the accounts of a body—

(a) in relation to the Common Council is a reference to the accounts mentioned in paragraph 2(a) and (b) of Schedule 2; and

(b) in relation to the members of a recognised fund-holding practice is, subject to paragraph 3(2) of that Schedule and section 6(3), a reference to such of their accounts as relate to allotted sums paid to the members.

(4) A reference in this Act to a local government elector for any area—

(a) in relation to the Broads Authority, is a reference to a local government elector for the area of any participating authority (as defined by section 25 of the Norfolk and Suffolk Broads Act 1988); and

(b) in relation to a National Park authority which is the local planning authority for a National Park, is a reference to a local government elector for any area the whole or any part of which is comprised in that Park.

#### **54 Consequential amendments, transitionals and repeals**

(1) Schedule 3 (consequential amendments) has effect.

(2) Schedule 4 (transitional provisions, savings etc.) has effect.

(3) The enactments mentioned in Schedule 5 are repealed or revoked to the extent specified in the third column of that Schedule.

#### **55 Short title, commencement and extent**

(1) This Act may be cited as the Audit Commission Act 1998.

(2) This Act comes into force at the end of the period of three months beginning with the day on which it is passed.

(3) This Act extends to England and Wales only.

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## SCHEDULES

### SCHEDULE 1

Section 1(5).

#### THE AUDIT COMMISSION

##### *Status*

- 1 The Commission shall be a body corporate.
- 2 The Commission shall not be regarded as acting on behalf of the Crown and neither the Commission nor its members, officers or servants shall be regarded as Crown servants.

##### *Functions of Secretary of State in relation to Commission*

- 3 (1) The Secretary of State may give the Commission directions as to the discharge of its functions and the Commission shall give effect to any such directions.
- (2) The Commission shall provide the Secretary of State with such information relating to the discharge of its functions as he may require and for that purpose shall permit any person authorised by him to inspect and make copies of any accounts or other documents of the Commission and shall afford such explanation of them as that person or the Secretary of State may require.
- (3) No direction shall be given by the Secretary of State and no information shall be required by him under this paragraph in respect of any particular body subject to audit.
- (4) Before giving any direction under this paragraph the Secretary of State shall consult—
- (a) the Commission;
  - (b) such associations of local authorities as appear to him to be concerned or, as the case may require, such organisations connected with the health service as appear to him to be appropriate; and
  - (c) such bodies of accountants as appear to him to be appropriate.
- (5) The Secretary of State shall publish any direction given by him under this paragraph.

##### *Tenure of office of members*

- 4 (1) Subject to sub-paragraphs (2) to (5), every member of the Commission shall hold and vacate his office in accordance with the terms of his appointment.
- (2) Any member may resign by notice in writing to the Secretary of State.
- (3) The chairman or deputy chairman may resign his office as chairman or deputy chairman by notice in writing to the Secretary of State.
- (4) The Secretary of State may remove a member from office if that member—



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- (a) has become bankrupt or made an arrangement with his creditors;
  - (b) is incapacitated by physical or mental illness;
  - (c) has been absent from meetings of the Commission for a period of six months otherwise than for a reason approved by the Secretary of State; or
  - (d) is in the opinion of the Secretary of State otherwise unable or unfit to discharge the functions of a member.
- (5) If the chairman or deputy chairman ceases to be a member he shall also cease to be chairman or deputy chairman.

*Remuneration etc. of members*

- 5 (1) The Commission shall pay to each member such remuneration and allowances (if any) as the Secretary of State may determine.
- (2) As regards any member in whose case the Secretary of State may so determine, the Commission shall pay or make provision for the payment of such sums by way of pension, allowances and gratuities to or in respect of him as the Secretary of State may determine.
- (3) Where a person ceases to be a member otherwise than on the expiration of his term of office and it appears to the Secretary of State that there are special circumstances which make it right for him to receive compensation, the Commission shall pay as compensation to that person such amount as the Secretary of State may determine.

*House of Commons disqualification*

- 6 In Part III of Schedule 1 to the House of Commons Disqualification Act 1975 (disqualifying offices) there shall continue to be the following entry—
- “Any member of the Audit Commission for Local Authorities and the National Health Service in England and Wales in receipt of remuneration”.

*Staff*

- 7 (1) The Commission shall appoint a chief officer who shall be known as the Controller of Audit and his appointment shall require the approval of the Secretary of State.
- (2) The Commission shall appoint such other officers and servants as it considers necessary for the discharge of its functions.
- (3) The Commission’s officers and servants (in this paragraph referred to as employees) shall be appointed at such remuneration and on such other terms and conditions as the Commission may determine.
- (4) The Commission may—
- (a) pay such pensions, allowances or gratuities as it may determine to or in respect of any of its employees;
  - (b) make such payments as it may determine towards the provision of pensions, allowances or gratuities to or in respect of any of its employees; or
  - (c) provide and maintain such schemes as it may determine (whether contributory or not) for the payment of pensions, allowances or gratuities to or in respect of any of its employees.

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- (5) The references in sub-paragraph (4) to pensions, allowances or gratuities to or in respect of any employees include references to pensions, allowances or gratuities by way of compensation to or in respect of employees who suffer loss of office or employment.
- (6) If an employee becomes a member of the Commission and was by reference to his employment by the Commission a participant in a pension scheme maintained by the Commission for the benefit of any of its employees, the Commission may determine that his service as a member shall be treated for the purposes of the scheme as service as an employee of the Commission whether or not any benefits are payable to or in respect of him by virtue of paragraph 5.

*Financial provisions*

- 8 (1) Subject to sub-paragraph (2), it shall be the duty of the Commission so to manage its affairs that its income from fees and otherwise will, taking one year with another, be not less than its expenditure properly chargeable to its income and expenditure account.
- (2) Sub-paragraph (1) applies separately with respect to—
  - (a) the functions of the Commission under section 37 in relation to the discharge of social services functions;
  - (b) its functions under section 38 in relation to the discharge of housing benefit administration functions and council tax administration functions;
  - (c) its functions under sections 40 and 41 relating to registered social landlords;
  - (d) its functions under section 42 relating to such landlords;
  - (e) its functions under section 41 of the Education Act 1997 (inspections of local education authorities);
  - (f) its functions in relation to health service bodies; and
  - (g) its other functions.
- 9 (1) The Commission may borrow—
  - (a) from the Secretary of State, or
  - (b) temporarily (by way of overdraft or otherwise) and with his consent, from any other person,
 such sums as it may require for the purpose of meeting its obligations and discharging its functions.
- (2) The aggregate amount outstanding in respect of the principal of any sums borrowed by the Commission under sub-paragraph (1) shall not exceed £4 million or such greater sum, not exceeding £20 million, as the Secretary of State may from time to time by order specify.
- (3) The Secretary of State may lend to the Commission any sums which it has power to borrow under sub-paragraph (1)(a); and the Treasury may issue to the Secretary of State out of the National Loans Fund any sums necessary to enable him to make loans under this sub-paragraph.
- (4) Loans made under sub-paragraph (3) shall be repaid to the Secretary of State at such times and by such methods, and interest on the loans shall be paid to him at such times and at such rates, as he may from time to time determine.

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- (5) All sums received by the Secretary of State under sub-paragraph (4) shall be paid into the National Loans Fund.
  - (6) The Secretary of State shall prepare, in respect of each financial year and in such form as the Treasury may direct, an account—
    - (a) of any sums issued to him under sub-paragraph (3) or received by him under sub-paragraph (4), and
    - (b) of the disposal by him of any sums so received,and shall send the account to the Comptroller and Auditor General not later than the end of the month of March following the financial year to which it relates; and the Comptroller and Auditor General shall examine, certify and report on the account and lay copies of it and of his report before each House of Parliament.
  - (7) Any consent, loan or determination by the Secretary of State under this paragraph shall require the approval of the Treasury.
- 10
- (1) The Treasury may guarantee, in such manner and on such conditions as they think fit, the repayment of the principal of, the payment of interest on and the discharge of any other financial obligation in connection with any sums which the Commission borrows from a person other than the Secretary of State.
  - (2) Immediately after a guarantee is given under this paragraph, the Treasury shall lay a statement of the guarantee before each House of Parliament; and where any sum is issued for fulfilling a guarantee so given, the Treasury shall lay before each House of Parliament a statement relating to that sum as soon as possible after the end of each financial year beginning with that in which the sum is issued and ending with that in which all liability in respect of the principal sum and in respect of interest on it is finally discharged.
  - (3) Any sums required by the Treasury for fulfilling a guarantee under this paragraph shall be charged on and issued out of the Consolidated Fund.
  - (4) If any sums are issued in fulfilment of a guarantee given under this paragraph, the Commission shall make to the Treasury, at such times and in such manner as the Treasury may from time to time direct—
    - (a) payments of such amounts as the Treasury so direct in or towards repayment of the sums so issued, and
    - (b) payments of interest, at such rates as the Treasury so direct, on what is outstanding for the time being in respect of sums so issued.
  - (5) Any sums received by the Treasury in pursuance of sub-paragraph (4) shall be paid into the Consolidated Fund.
- 11
- (1) The Commission shall keep proper accounts and other records in relation to its 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.
  - (2) 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.
  - (3) 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.

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- (4) The Comptroller and Auditor General shall examine and certify the statement of account transmitted to him under sub-paragraph (3) and shall lay before Parliament copies of the statement together with his report on it.
- (5) In this Schedule, “financial year” means the 12 months ending with 31st October in any year.

*Proceedings*

- 12 (1) The Commission shall regulate its own proceedings.
- (2) The validity of any proceedings of the Commission shall not be affected by any vacancy among its members or by any defect in the appointment of any of its members.
- 13 (1) The application of the seal of the Commission shall be authenticated by the signature of the chairman or of some other member authorised either generally or specially by the Commission for that purpose.
- (2) Any document purporting to be a document duly executed under the seal of the Commission shall be received in evidence and shall, unless the contrary is proved, be deemed to be so executed.

*Annual report*

- 14 (1) The Commission shall publish an annual report on the discharge of its functions.
- (2) Copies of each annual report shall be sent by the Commission to the Secretary of State who shall lay copies of it before each House of Parliament.

SCHEDULE 2

Section 2.

ACCOUNTS SUBJECT TO AUDIT

- 1 Section 2 applies to all accounts of—
- (a) a local authority;
  - (b) a joint authority;
  - (c) a parish meeting of a parish not having a separate parish council;
  - (d) a committee of a local authority, including a joint committee of two or more such authorities;
  - (e) the Council of the Isles of Scilly;
  - (f) any charter trustees constituted under section 246 of the 1972 Act;
  - (g) a body specified in section 98(1) of the National Health Service Act 1977;
  - (h) a port health authority;
  - (i) the Broads Authority;
  - (j) a National Park authority;
  - (k) a police authority established under section 3 of the Police Act 1996;
  - (l) the Service Authority for the National Crime Squad;
  - (m) a fire authority constituted by a combination scheme;
  - (n) a licensing planning committee;

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- (o) an internal drainage board; and
  - (p) a probation committee, except the committee for the inner London probation area.
- 2 Section 2 also applies to—
  - (a) the accounts of the collection fund of the Common Council and the accounts of the City fund; and
  - (b) the accounts relating to the superannuation fund maintained and administered by the Common Council under the Local Government Pension Scheme Regulations 1995.
- 3 (1) Subject to sub-paragraph (2), section 2 also applies to the accounts of the members of a recognised fund-holding practice so far as they relate to allotted sums paid to the members.
- (2) In such circumstances and to such extent as regulations made by the Secretary of State so provide, this Act does not apply to the accounts for any year of the members of a recognised fund-holding practice if the accounts are submitted to a Health Authority and summarised in that Health Authority’s accounts.
- 4 Subject to section 30, section 2 also applies to the accounts of a Passenger Transport Executive.

## SCHEDULE 3

Section 54(1).

### CONSEQUENTIAL AMENDMENTS

#### *The Public Health Act 1875 (c. 55)*

- 1 In section 265 of the Public Health Act 1875 (protection of local authority and their officers from personal liability) for the words from “make any payment” to the end substitute “make any payment in pursuance of section 17 or 18 of the Audit Commission Act 1998”.

#### *The Transport Act 1968 (c. 73)*

- 2 In section 14 of the Transport Act 1968 (accounts of Passenger Transport Executives) for subsection (3) substitute—
  - “(3) As soon as the accounts of the Executive for any accounting period have been audited in accordance with the Audit Commission Act 1998 they shall send a copy of any statement of accounts prepared by them for that period pursuant to regulations under section 27 of that Act to the Minister, to the Authority and to each of the councils of the districts comprised in the county which is coterminous with or includes the Executive’s area, together with a copy of the auditor’s opinion on that statement.”

#### *The Local Government Act 1972 (c. 70)*

- 3 (1) In section 80(1)(e) of the Local Government Act 1972 (disqualification for membership of local authority) for “Part III of the Local Government Finance Act 1982” substitute “the Audit Commission Act 1998”.

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- (2) In section 86(1)(b) of that Act (vacancy in office of member of local authority) for “under Part III of the Local Government Finance Act 1982 or by virtue of” substitute “under the Audit Commission Act 1998 or by virtue of”.
- (3) In section 87(1)(d) of that Act (date of casual vacancies)—
  - (a) for “under Part III of the Local Government Finance Act 1982 or by virtue of a” substitute “under the Audit Commission Act 1998 or by virtue of a”;
  - (b) for “relevant order or decision under that Part of that Act or (as the case may be) that” substitute “relevant order or decision under that Act or (as the case may be) that”.
- (4) In section 137(7) of that Act (separate account of expenditure under the section) for the words from “and section 24” to the end substitute “and section 14 of the Audit Commission Act 1998 (rights of inspection) shall apply in relation to any such separate account of a local authority as it applies in relation to any statement of accounts prepared by them pursuant to regulations under section 27 of that Act.”
- (5) Section 246(15) of that Act continues to have effect with the amendment made by paragraph 5(5) of Schedule 5 to the Local Government Finance Act 1982, that is with the substitution for “Sections 154 to 168 above” of “Section 168 above”.

*The House of Commons Disqualification Act 1975 (c. 24)*

- 4 In Schedule 1 to the House of Commons Disqualification Act 1975, in Part III (Other Disqualifying Offices), for the entry “Controller of Audit appointed under paragraph 7(1) of Schedule 3 to the Local Government Finance Act 1982” substitute “Controller of Audit appointed under paragraph 7(1) of Schedule 1 to the Audit Commission Act 1998”.

*The Local Government, Planning and Land Act 1980 (c. 65)*

- 5 (1) In section 2(7) of the Local Government, Planning and Land Act 1980 (recommended ways for local authorities to publish information) for paragraph (b) substitute—
  - “(b) its inclusion in a statement of accounts prepared by an authority to which this section applies in accordance with regulations under section 27 of the Audit Commission Act 1998 or in an abstract of accounts prepared by such an authority in accordance with regulations under section 105 of the Local Government (Scotland) Act 1973; or”.
- (2) In section 14(1) of that Act (saving for powers of Secretary of State to make regulations about accounts) for “section 23 of the Local Government Finance Act 1982” substitute “section 27 of the Audit Commission Act 1998”.

*The Local Government Finance Act 1982 (c. 32)*

- 6 In section 9 of the Local Government Finance Act 1982 (information for the purposes of block grant), in subsection (1), for “the Audit Commission established under Part III of this Act” substitute “the Audit Commission for Local Authorities and the National Health Service in England and Wales”.

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*The Public Health (Control of Disease) Act 1984 (c. 22)*

- 7 In section 69 of the Public Health (Control of Disease) Act 1984 (protection from personal liability), in subsection (2), for “section 19 or 20 of the Local Government Finance Act 1982” substitute “section 17 or 18 of the Audit Commission Act 1998”.

*The Local Government (Interim Provisions) Act 1984 (c. 53)*

- 8 (1) In section 10(2) of the Local Government (Interim Provisions) Act 1984 (disqualification) for “Part III of the Local Government Finance Act 1982” substitute “the Audit Commission Act 1998”.
- (2) In section 11(1) of that Act (accounts) for “sections 17, 19 and 20 of the Local Government Finance Act 1982” substitute “sections 15 to 18 of the Audit Commission Act 1998”.

*The Building Act 1984 (c. 55)*

- 9 In section 115 of the Building Act 1984 (protection of members etc. of authorities), in subsection (3), for “section 19 or 20 of the Local Government Finance Act 1982” substitute “section 17 or 18 of the Audit Commission Act 1998”.

*The Further Education Act 1985 (c. 47)*

- 10 In section 3 of the Further Education Act 1985 (financial and accounting provisions) in subsection (4) for “section 23 of the Local Government Finance Act 1982” substitute “section 27 of the Audit Commission Act 1998”.

*The Local Government Act 1985 (c. 51)*

- 11 (1) The Local Government Act 1985 is amended as follows.
- (2) In section 63 (preparation of final accounts)—
- (a) in subsection (1), for “Part III of the Local Government Finance Act 1982” substitute “the Audit Commission Act 1998”;
  - (b) in subsection (2)—
    - (i) for “Part III of the said Act of 1982” substitute “the said Act of 1998”;
    - (ii) in paragraph (a), for “section 16(1)” substitute “section 6(1)”; and
    - (iii) in paragraph (b), for “section 16(2) or 28(1)” substitute “section 6(4) or 48(1)”;
  - (c) in subsection (3)—
    - (i) for “section 29(1) of the said Act of 1982” substitute “section 28 of the said Act of 1998”; and
    - (ii) for “section 30(1)(a)” substitute “section 49(1)(a)”; and
  - (d) subsection (6) shall be omitted.
- (3) In section 79 (audit)—
- (a) in subsection (1)—
    - (i) for “Part III of the Local Government Finance Act 1982” substitute “the Audit Commission Act 1998”; and
    - (ii) for “that Part” substitute “that Act”;

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- (b) in subsection (2), for “Sections 15(1)(a), 17, 19, 20, 22, 23 and 24 of that Act” substitute “Sections 5(1)(b) and (c), 14 to 18, 25 and 27 of that Act”;
- (c) in subsection (3), for “Part III of the said Act of 1982” substitute “the said Act of 1998”;
- (d) in subsection (4), for “section 15(3) of the said Act of 1982” substitute “section 8 of the said Act of 1998”; and
- (e) in subsection (8), for “Part III of the said Act of 1982” substitute “the said Act of 1998”.

- (4) In section 92 of that Act (control of liabilities affecting successor authorities) in subsection (7) for “Part III of the Local Government Finance Act 1982” substitute “the Audit Commission Act 1998”.

*The Local Government Act 1986 (c. 10)*

- 12 In section 5 of the Local Government Act 1986 (separate account of expenditure on publicity), in subsection (4), for “section 23(1)(e) of the Local Government Finance Act 1982” substitute “section 27(1)(e) of the Audit Commission Act 1998”.

*The Airports Act 1986 (c. 31)*

- 13 In section 24(3)(a) of the Airports Act 1986 (separate accounts in respect of agreements under the section)—
- (a) for “section 24 of the Local Government Finance Act 1982” substitute “section 14 of the Audit Commission Act 1998”;
  - (b) for “section 23” substitute “section 27”.

*The Norfolk and Suffolk Broads Act 1988 (c. 4)*

- 14 In section 17 of the Norfolk and Suffolk Broads Act 1988 (accounts and auditing), in subsection (11), for “section 23 of the Act of 1982 (regulations as to accounts)” substitute “section 27 of the Audit Commission Act 1998 (accounts and audit regulations)”.

*Local Government Act 1988 (c. 9)*

- 15 In section 16 of the Local Government Act 1988 (supplementary), in subsection (1), for “Part III of the Local Government Finance Act 1982” substitute “the Audit Commission Act 1998”.

*The Education Reform Act 1988 (c. 40)*

- 16 (1) Section 182 of the Education Reform Act 1988 is amended as follows.
- (2) In subsection (1)(a) for “Part III of the Local Government Finance Act 1982” substitute “the Audit Commission Act 1998”.
- (3) In subsection (2)—
- (a) for “Part III of that Act” substitute “that Act”;
  - (b) in paragraph (a) for “section 16(1)” substitute “section 6(1)”;
  - (c) in paragraph (b) for “section 16(2) or 28(1)” substitute “section 6(4) or 48(1)”.



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- (4) In subsection (3)—
- (a) for “section 29(1)” substitute “section 28”;
  - (b) for “section 30(1)(a)” substitute “section 49(1)(a)”.
- 17 In section 191 of that Act (penalties for contravention of section 188 or 189) in subsection (5) for “Part III of the Local Government Finance Act 1982” substitute “the Audit Commission Act 1998”.

*The Local Government and Housing Act 1989 (c. 42)*

- 18 (1) In section 11 of the Local Government and Housing Act 1989 (confidentiality of staff records)—
- (a) in subsection (1), omit “section 17 of the Local Government Finance Act 1982 or”; and
  - (b) in subsection (3), in the definition of “relevant body”, for “Part III of the said Act of 1982” substitute “the Audit Commission Act 1998”.
- (2) In section 66(5) of that Act (meaning of references to proper practices in specified earlier enactments and all later ones) in paragraph (b) omit “Part III of the Local Government Finance Act 1982 and”.
- (3) In section 70 of that Act (requirements for companies under control or subject to influence of local authorities)—
- (a) in subsection (2), for “Part III of the Local Government Finance Act 1982 (accounts and audits)”, and
  - (b) in subsection (4), for “Part III of the Local Government Finance Act 1982”, substitute “the Audit Commission Act 1998”.

*The Town and Country Planning Act 1990 (c. 8)*

- 19 In section 2 of the Town and Country Planning Act 1990 (joint planning boards) in subsection (6A) for “Part III (accounts and audit) of the Local Government Finance Act 1982” substitute “the Audit Commission Act 1998 except sections 11, 12, 44 to 47 and 51”.

*The National Health Service and Community Care Act 1990 (c. 19)*

- 20 In paragraph 7(2) of Schedule 2 to the National Health Service and Community Care Act 1990 (NHS trusts) for “subsection (3) of section 15 of the Local Government Finance Act 1982” substitute “section 8 of the Audit Commission Act 1998”.

*The Environmental Protection Act 1990 (c. 43)*

- 21 In Schedule 3 to the Environmental Protection Act 1990, in paragraph 5 (protection from personal liability), for “section 19 or 20 of the Local Government Finance Act 1982” substitute “section 17 or 18 of the Audit Commission Act 1998”.

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*The London Local Authorities Act 1991 (c. xiii)*

- 22 In section 23 of the London Local Authorities Act 1991 (audible intruder alarms) in subsection (11B) for “section 19 or 20 of the Local Government Finance Act 1982” substitute “section 17 or 18 of the Audit Commission Act 1998”.

*The Social Security Administration Act 1992 (c. 5)*

- 23 (1) Section 139D of the Social Security Administration Act 1992 (directions by the Secretary of State) inserted by section 8 of the Social Security Administration (Fraud) Act 1997 is amended as follows.
- (2) In subsection (1)(b)—
- (a) for “section 18(3) of the Local Government Finance Act 1982” substitute “section 10(1) of the Audit Commission Act 1998”, and
- (b) for “section 28AC(2) of that Act” substitute “section 39 of that Act”.
- (3) In subsection (1)(d) for “section 28AB(7) of the Local Government Finance Act 1982” substitute “section 38(7) of the Audit Commission Act 1998”.

*The Local Government Act 1992 (c. 19)*

- 24 (1) In section 16 of the Local Government Act 1992 (consultation with the Audit Commission)—
- (a) in subsection (1) for “with which the Audit Commission is concerned”, and
- (b) in subsection (2) for “with which it is concerned”,
- substitute “subject to audit”.
- (2) After subsection (3) of that section insert—
- “(4) Any reference in the Audit Commission Act 1998 to the Audit Commission’s functions under that Act shall include a reference to its functions under this section.
- (5) In this section—
- “the Audit Commission” means the Audit Commission for Local Authorities and the National Health Service in England and Wales, and
- “body subject to audit” has the same meaning as in the Audit Commission Act 1998.”

*The Education Act 1993 (c. 35)*

- 25 In section 154 of the Education Act 1993 (inspection of accounts and reports to Parliament), in subsection (4), for “section 220 of the Education Reform Act 1988” substitute “section 36 of the Audit Commission Act 1998”.

*The Noise and Statutory Nuisance Act 1993 (c. 40)*

- 26 In Schedule 3 to the Noise and Statutory Nuisance Act 1993, in paragraph 12 (protection from personal liability), for “section 19 or 20 of the Local Government Finance Act 1982” substitute “section 17 or 18 of the Audit Commission Act 1998”.

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*The Local Government (Wales) Act 1994 (c. 19)*

- 27 (1) Paragraph 16 of Schedule 13 to the Local Government (Wales) Act 1994 (audit) is amended as follows.
- (2) In sub-paragraph (1) for “Part III of the Local Government Finance Act 1982” and “that Part” substitute “the Audit Commission Act 1998” and “that Act”.
- (3) In sub-paragraph (2) for “Sections 15(1)(a), 17, 19, 20, 22, 23 and 24 of that Act” substitute “Sections 5(1)(b) and (c), 14 to 18, 25 and 27 of that Act”.
- (4) In sub-paragraph (3) for “Part III of the Act of 1982” substitute “the Act of 1998”.
- (5) In sub-paragraph (4) for “section 15(3) of the Act of 1982” substitute “section 8 of the Act of 1998”.
- 28 (1) Paragraph 12 of Schedule 17 to that Act (closure of old authorities' accounts) is amended as follows.
- (2) In sub-paragraph (3)(a) for “Part III of the Local Government Finance Act 1982 (accounts and audit)” substitute “the Audit Commission Act 1998”.
- (3) In sub-paragraph (4)—
- (a) for “Part III of the Act of 1982” substitute “the Act of 1998”;
- (b) in paragraph (a) for “section 16(1)” substitute “section 6(1)”;
- (c) in paragraph (b) for “section 16(2) or 28(1)” substitute “section 6(4) or 48(1)”.
- (4) In sub-paragraph (5)—
- (a) for “section 29(1) of the Act of 1982” substitute “section 28 of the Act of 1998”;
- (b) for “section 30(1)(a)” substitute “section 49(1)(a)”.

*The Environment Act 1995 (c. 25)*

- 29 In Part I of Schedule 5 to the Environment Act 1995 (membership of flood defence committees), in paragraphs 3(1)(d) and 4(1)(c) for “Part III of the Local Government Finance Act 1982 (accounts and audit)” substitute “the Audit Commission Act 1998”.

*The London Local Authorities Act 1995 (c. x)*

- 30 In Part I of the Schedule to the London Local Authorities Act 1995 (enactments applied to deputy members of London Fire and Civil Defence Authority), omit “Local Government Finance Act 1982: section 16.” and at the end of that Part insert “Audit Commission Act 1998: section 6.”

*The Noise Act 1996 (c. 37)*

- 31 In section 12 of the Noise Act 1996 (protection from personal liability), in subsection (2), for “section 19 or 20 of the Local Government Finance Act 1982” substitute “section 17 or 18 of the Audit Commission Act 1998”.

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*The Education Act 1996 (c. 56)*

- 32 (1) The Education Act 1996 is amended as follows.
- (2) In section 123 (certification of statements by Audit Commission), in subsection (2)—
- (a) for “section 29(1)(d) of the Local Government Finance Act 1982” substitute “section 28(1)(d) of the Audit Commission Act 1998”; and
  - (b) for “section 29(1)(d) of that Act” substitute “section 28(1)(d) of that Act”.
- (3) In section 310 (inspection of accounts and reports to Parliament) in subsection (4) for “section 220 of the Education Reform Act 1988” substitute “section 36 of the Audit Commission Act 1998”.

*The Police Act 1997 (c. 50)*

- 33 In Schedule 4 to the Police Act 1997 (enactments dealing with kind of matters about which provision may be made in relation to the National Criminal Intelligence Service) in paragraph (f) for “Part III of the Local Government Finance Act 1982” substitute “the Audit Commission Act 1998”.

*The Local Government (Contracts) Act 1997 (c. 65)*

- 34 (1) Section 8 of the Local Government (Contracts) Act 1997 is amended as follows.
- (2) In subsection (1)(a) for “section 19 of the Local Government Finance Act 1982” substitute “section 17 of the Audit Commission Act 1998”.
- (3) In subsection (1)(b) for “section 20” substitute “section 18”.
- (4) In subsection (1)(c) for “section 25A” and “section 25B” substitute respectively “section 20” and “section 22”.
- (5) In subsection (2)—
- (a) for “section 25A of the Local Government Finance Act 1982” substitute “section 20 of the Audit Commission Act 1998”, and
  - (b) for “section 25B(3)” substitute “section 22(3)”.

SCHEDULE 4

Section 54(2).

TRANSITIONAL PROVISIONS, SAVINGS ETC.

*General*

- 1 The substitution of this Act for the provisions repealed by it does not affect the continuity of the law.
- 2 Anything done (including subordinate legislation made) under or otherwise by reference to a provision repealed by this Act has effect as if done under or by reference to any corresponding provision of this Act.
- 3 Any reference, express or implied, in this Act, another enactment or an instrument or document, to a provision of this Act is, subject to its context, to be read as being or including a reference to the corresponding provision repealed by this Act, in relation

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to times, circumstances or purposes in relation to which the repealed provision had effect.

4 (1) Any reference, express or implied, in any enactment, instrument or document, to a provision repealed by this Act is, subject to its context, to be read as being or including a reference to the corresponding provision of this Act, in relation to times, circumstances or purposes in relation to which that provision has effect.

(2) In particular, where a power conferred by an Act is expressed to be exercisable in relation to enactments contained in Acts passed before or in the same Session as that Act, the power is also exercisable in relation to any corresponding provision of this Act.

5 Any reference to an enactment repealed by this Act which is contained in a document made, served or issued after the repeal has come into force is, subject to its context, to be read as being or including a reference to the corresponding provision of this Act.

6 Paragraphs 1 to 5 are in place of section 17(2) of the Interpretation Act 1978 but do not otherwise affect the application of that Act.

#### *References to district audit etc.*

7 References in any statutory provision or document to district audit, to audit by a district auditor, to audit in accordance with Part VIII of the 1972 Act or to professional audit are to be construed, in relation to the accounts of a local authority or other public body, as a reference to audit as mentioned in section 2(1).

#### *Change of name of the Commission*

8 References in any enactment or subordinate legislation to the Audit Commission for Local Authorities in England and Wales are to be construed as references to the Audit Commission for Local Authorities and the National Health Service in England and Wales.

#### *Continuity of employment: district audit and health service*

9 (1) Sub-paragraph (2) applies where a person employed in the civil service of the State became an officer or servant of the Commission in consequence of—

- (a) paragraph 8 of Schedule 3 to the Local Government Finance Act 1982 (transfer from district audit service), or
- (b) section 20(4) of the National Health Service and Community Care Act 1990 (transfer from audit of health service bodies).

(2) For the purposes of the Employment Rights Act 1996—

- (a) that person's period of employment in the civil service of the State counts as a period of employment by the Commission, and
- (b) the change of employment does not break the continuity of the period of employment.

#### *Financial years of the Commission*

10 In relation to the period beginning on 1st April 1997 and ending with 31st October 1997, Schedule 1 has effect as if “financial year” meant that period.

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SCHEDULE 5

Section 54(3).

REPEALS AND REVOCATION

<i>Chapter or number</i>	<i>Short title or title</i>	<i>Extent of repeal or revocation</i>
1982 c. 32.	The Local Government Finance Act 1982.	Sections 11 to 36.  Section 38(5) and (6). Schedule 3. Schedule 5. In Schedule 6, Part IV.
1983 c. 29.	The Miscellaneous Financial Provisions Act 1983.	In Schedule 2, the entry relating to the Local Government Finance Act 1982.
1984 c. 32.	The London Regional Transport Act 1984.	In Schedule 6, paragraph 26.
1985 c. 9.	The Companies Consolidation (Consequential Provisions) Act 1985.	In Schedule 2, the entry relating to the Local Government Finance Act 1982.
1985 c. 43.	The Local Government (Access to Information) Act 1985.	In Schedule 2, paragraph 7.
1985 c. 51.	The Local Government Act 1985.	Section 63(6).  Section 72(3).
1985 c. 67.	The Transport Act 1985.	In Schedule 3, paragraph 8. In Schedule 7, paragraph 22.
1988 c. 4.	The Norfolk and Suffolk Broads Act 1988.	Section 17(10) and (12).
1988 c. 9.	The Local Government Act 1988.	Section 30.  Schedule 4.
1988 c. 33.	The Criminal Justice Act 1988.	In Schedule 11, paragraph 8.
1988 c. 40.	The Education Reform Act 1988.	Section 220.
1988 c. 41.	The Local Government Finance Act 1988.	In Schedule 12, paragraph 3.
1989 c. 42.	The Local Government and Housing Act 1989.	In section 11(1), the words “section 17 of the Local

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<i>Chapter or number</i>	<i>Short title or title</i>	<i>Extent of repeal or revocation</i>
		Government Finance Act 1982 or”.
		In section 66(5)(b), the words from “Part III” to “and”.
		Section 184(2).
1990 c. 19.	The National Health Service and Community Care Act 1990.	Section 20(1) and (3) to (8).
		Schedule 4.
1991 c. 15.	The Local Government Finance (Publicity for Auditors' Reports) Act 1991.	The whole Act.
1992 c. 13.	The Further and Higher Education Act 1992.	In Schedule 8, paragraph 51.
1992 c. 19.	The Local Government Act 1992.	Sections 1 to 7.
		In section 28, the definitions of “the 1982 Act”, “the Audit Commission” and “auditor”, and subsection (2).
		Section 29(1).
		Section 30(2).
1993 c. 47.	The Probation Service Act 1993.	In Schedule 3, paragraph 6.
1994 c. 29.	The Police and Magistrates' Courts Act 1994.	In Schedule 4, paragraphs 25 to 28.
1994 c. 30.	The Education Act 1994.	In Schedule 2, paragraph 8(1) and (5).
1995 c. 17.	The Health Authorities Act 1995.	In Schedule 1, paragraph 106.
1995 c. 25.	The Environment Act 1995.	In Schedule 7, paragraph 19.
1995 c. x.	The London Local Authorities Act 1995.	In Part I of the Schedule, the words “Local Government Finance Act 1982: section 16.”
1996 c. 10.	The Audit (Miscellaneous Provisions) Act 1996.	Sections 1, 2, 3, 5 and 6.
1996 c. 16.	The Police Act 1996.	In Schedule 7, paragraph 1(2) (s).
1996 c. 18.	The Employment Rights Act 1996.	In Schedule 1, paragraphs 19 and 45(3)(a).

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<i>Chapter or number</i>	<i>Short title or title</i>	<i>Extent of repeal or revocation</i>
<a href="#">1996 c. 52.</a>	The Housing Act 1996.	In Schedule 3, paragraph 2.
<a href="#">1996 c. 56.</a>	The Education Act 1996.	In Schedule 37, paragraph 78.
<a href="#">1997 c. 44.</a>	The Education Act 1997.	In Schedule 7, paragraph 5.
<a href="#">1997 c. 47.</a>	The Social Security Administration (Fraud) Act 1997.	Section 6.  In Schedule 1, paragraph 1.
<a href="#">1997 c. 50.</a>	The Police Act 1997.	In Schedule 6, paragraphs 19 to 22.
<a href="#">S.I. 1991/724.</a>	The High Court and County Courts Jurisdiction Order 1991.	In the Schedule, in Part I, the entry relating to the Local Government Finance Act 1982.

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