



Local Government (Scotland) Act 1973

1973 CHAPTER 65

PART VII

FINANCE

Accounts and audit

96 Accounts and audit

- (1) Every local authority shall keep accounts of all transactions relating to all funds of the authority and, subject to any provision contained in regulations made under section 105 of this Act, the accounts of the general fund of a local authority shall comprise such current, capital and borrowing accounts as may be necessary for the purpose of distinguishing transactions for different purposes.
- (2) All accounts of a local authority shall be made up in respect of each financial year.
- (3) Every local authority shall, in addition to preparing accounts in respect of any financial year, prepare in duplicate an abstract of the accounts for that year.
- (4) The accounts of every local authority in respect of any financial year shall be audited by a professional accountant, who is either an officer of the Commission for Local Authority Accounts or is an approved auditor appointed by the Commission in accordance with the provisions of this Part of this Act.
- (5) The financial year of a local authority shall be the period of twelve months beginning with 16th May, so however that—
 - (a) the Secretary of State may direct, either in relation to local authorities generally or in relation to a particular local authority, that their financial year shall be such period as the Secretary of State may specify; and
 - (b) for the purposes of subsections (2) to (4) above, the first financial year of any local authority shall be the period beginning with the date on which the authority comes into existence in accordance with the provisions of this Act and ending with 15th May 1976 ;

and references in this Act and in any other enactment (whether passed or made before or after the passing of this Act) to the financial year of a local authority shall be construed in accordance with the provisions of this subsection.

97 Establishment of Commission for Local Authority Accounts in Scotland

- (1) There shall be established a body, to be known as the Commission for Local Authority Accounts in Scotland (hereafter in this Part of this Act referred to as "the Commission"), which shall consist of such number of members, not being more than twelve or less than nine, as the Secretary of State may determine, and the members shall be appointed by the Secretary of State after consultation with such associations of local authorities as appear to him to be concerned and with such other organisations or persons as he may think appropriate.
- (2) The Commission shall have the following functions, that is to say—
 - (a) securing the audit of all accounts of local authorities in accordance with the provisions of this Part of this Act;
 - (b) considering all reports made in accordance with the said provisions and investigating all matters raised by any such report;
 - (c) making recommendations to the Secretary of State and to local authorities in accordance with the said provisions; and
 - (d) advising the Secretary of State on any matter relating to the accounting of local authorities which he may refer to them for advice.
- (3) The Secretary of State may, after consultation with the Commission, with such associations of local authorities as appear to him to be concerned and with such other organisations or persons as he may think appropriate, give to the Commission directions of a general character as to the discharge of their functions, and the Commission shall give effect to any direction so given.
- (4) There shall be a Controller of Audit who shall be appointed by the Commission after consultation with, and subject to the approval of, the Secretary of State, and the Commission may appoint such other officers, and may appoint such agents, as they may determine.
- (5) The provisions of Schedule 8 to this Act shall have effect in relation to the Commission.
- (6) In this Part of this Act "auditor" includes the Controller of Audit, officers of the Commission, being professional accountants, and approved auditors appointed by the Commission for the purpose of conducting audits or, as the case may be, a particular audit, under this Part of this Act, and "approved auditor" means an auditor who is qualified under subsection (7) below.
- (7) An auditor is qualified for the purposes of subsection (6) above if, and only if, he is a member, or a firm all the members of which are members, of one or more of the following bodies—that is to say—
 - The Institute of Chartered Accountants of Scotland.
 - The Institute of Chartered Accountants in England and Wales.
 - The Association of Certified Accountants.
 - The Institute of Municipal Treasurers and Accountants.
 - The Institute of Chartered Accountants in Ireland.

Any other body of accountants established in the United Kingdom for the time being approved by the Secretary of State.

98 Expenses and accounts of Commission

- (1) The Commission shall have power to incur such expenses as appear to them to be necessary or expedient for the proper discharge of their functions, and—
 - (a) the Secretary of State may, with the consent of the Treasury, pay to the Commission grants of such amounts, at such times and subject to such conditions as he may determine in respect of expenses incurred by the Commission as aforesaid ;
 - (b) such part of the expenses of the Commission as is not met by grants under paragraph (a) above shall be met by local authorities in accordance with regulations made by the Secretary of State after consultation with such associations of local authorities as appear to him to be concerned.
- (2) A statutory instrument containing regulations made by the Secretary of State under paragraph (b) of subsection (1) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) The Commission shall keep proper accounts and other records in relation to their accounts and shall prepare in respect of each financial year a statement of account in such form as the Secretary of State may, with the approval of the Treasury, direct.
- (4) The statement of account prepared by the Commission in respect of each financial year shall be submitted to the Secretary of State before such date as he may, with the approval of the Treasury, direct.
- (5) The Secretary of State shall, on or before 30th November in each year, transmit to the Comptroller and Auditor General the statement of account prepared by the Commission for the financial year last ended.
- (6) The Comptroller and Auditor General shall examine and certify the statement of account transmitted to him under subsection (5) above and shall lay before Parliament copies of that statement together with his report thereon.

99 General duties of auditors

In auditing the accounts of any local authority under this Part of this Act, an auditor shall, by examination of the accounts and otherwise, satisfy himself that—

- (a) the accounts have been prepared in accordance with regulations made under section 105 of this Act and comply with the requirements of all other enactments and instruments applicable to the accounts ;
- (b) proper accounting practices have been observed in the preparation of the accounts.

100 Auditor's right of access to documents

- (1) An auditor shall have a right of access at all reasonable times to all such documents relating to the accounts of a local authority as it appears to him to be necessary to examine for the purpose of auditing those accounts under this Part of this Act and shall be entitled to require from any officer of that authority or any other person holding or accountable for any such document such information and explanation as he thinks

necessary for the said purpose and, if he thinks it necessary for providing any such information or explanation, to require any such officer or other person to attend before him in person and produce any such documents.

- (2) Without prejudice to subsection (1) above, every local authority shall provide an auditor with every facility and all information which he may reasonably require for the purpose of auditing their accounts.
- (3) If any person wilfully or negligently fails to comply with any requirement of an auditor under subsection (1) above, he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £100 and to an additional fine not exceeding £20 for each day on which the offence continues after conviction thereof.

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

- (1) Any person interested may inspect a copy of the abstract of the accounts of a local authority prepared by the authority under section 96(3) of this Act and may take copies or extracts from it without charge.
- (2) Any person interested may object to the accounts of a local authority or to any part of those accounts by—
 - (a) sending his objection in writing, together with a statement of the grounds thereof, to the auditor, and
 - (b) sending a copy of that objection and statement to the authority and to any officer of the authority who may be concerned.
- (3) Where any person objects under subsection (2) above to the accounts of a local authority, the auditor shall, if so requested by that person or authority or by any officer of the authority who may be concerned, afford to that person or authority or officer, as the case may be, an opportunity of appearing before and being heard by the auditor with respect to that objection; and any such person or officer may so appear and be heard either personally or by a representative.
- (4) Within fourteen days of the completion of the audit of the accounts of a local authority the auditor shall place on each duplicate abstract of those accounts prepared by the authority under section 96(3) of this Act a certificate, in such form as the Commission may direct, to the effect that he has audited the accounts in accordance with the provisions of this Part of this Act; and the auditor shall, on so certifying, forthwith send one duplicate abstract of the accounts to the Commission and the other duplicate abstract to the local authority.

102 Reports to Commission by Controller of Audit

- (1) The Controller of Audit shall make to the Commission such reports as they may require with respect to the accounts of local authorities audited under this Part of this Act and shall send a copy of any report so made to any local authority which is named in that report.
- (2) Without prejudice to subsection (1) above, the Controller of Audit may make a report to the Commission on any matters arising out of or in connection with the accounts of a local authority in order that those matters may be considered by the local authority concerned or brought to the attention of the public, and shall send a copy of any report so made to any local authority which is named in that report.

(3) Without prejudice to subsection (1) above, if the Controller of Audit, having considered the audit under this Part of this Act of the accounts of any local authority and having made such further inquiries (if any) as he may think fit—

- (a) is of the opinion—
 - (i) that any item of account is contrary to law, or
 - (ii) that there has been a failure on the part of any person to bring into account any sum which ought to have been brought into account, or
 - (iii) that any loss has been incurred or deficiency caused by the negligence or misconduct of any person or by the failure of the authority to carry out any duty imposed on them by any enactment; or
- (b) is of the opinion that any sum which ought to have been credited or debited to one account of the authority has been credited or, as the case may be, debited to another account of the authority; and
- (c) is not satisfied that the authority has taken or is taking such steps as may be necessary to remedy the matter;

he shall make to the Commission a special report with respect to the said accounts, setting forth his opinion as aforesaid and the grounds thereof.

(4) The Controller of Audit shall, on making a special report under subsection (3) above with respect to the accounts of any local authority, forthwith send a copy of that special report—

- (a) to that authority;
- (b) to any officer of the authority who may be concerned ;
- (c) if the matter raised by the special report has been made the subject of objection under section 101 of this Act, to the person making that objection ;
- (d) to any other person who in his opinion may be affected thereby.

103 Action by Commission on reports by Controller of Audit

(1) Subject to subsection (2) below, the Commission shall consider any report made to them by the Controller of Audit and may, if they think fit, hold a hearing into any matter raised by that report; and the Commission may thereafter make to the Secretary of State or to any local authority such recommendation as appears to the Commission to be appropriate in the light of the report.

(2) Where a special report is made to them under section 102(3) of this Act with respect to the accounts of any local authority, the Commission—

- (a) shall consider that special report and any observations on it made in writing by the authority or by any person to whom a copy of it was sent under section 102(4) of this Act, being observations made within fourteen days of the date on which such copy was sent as aforesaid to the authority or, as the case may be, that person or such longer period as the Commission may in any particular case allow ;
- (b) may if they think fit, and shall if so requested by the authority or by any person to whom a copy of the special report was sent as aforesaid, hold a hearing into any matter raised by the special report; and
- (c) may if they think fit, and shall if so directed by the Court of Session, state a case on any question of law arising on the special report for the opinion of the Court of Session.

- (3) Subject to subsection (4) below, if after consideration of the matters referred to in subsection (2) above the Commission find that any item of expenditure is contrary to law, or that there has been a failure to bring into account any sum which ought to have been brought into account, or that any loss or deficiency has been incurred or caused as mentioned in section 102(3)(a) of this Act, or that a local authority have not taken steps to remedy such a matter as is referred to in section 102(3)(b) of this Act, the Commission shall send the special report together with their findings to the Secretary of State and may recommend him to make an order—
- (a) requiring any person whom they find responsible for incurring or authorising that expenditure, or for that failure, or for that loss or deficiency, as the case may be, to pay to the local authority concerned an amount not exceeding the amount of the said expenditure, or of the said sum, or of the said loss or deficiency; or, as the case may be,
 - (b) directing the authority to make such rectification of their accounts as appears to the Commission to be necessary.
- (4) The Commission shall not recommend that any officer or member of a local authority be ordered to pay any amount to the authority by reason only of his having signed a cheque or order in respect of any payment, if he satisfies the Commission—
- (a) in the case of an officer of the authority, that before signing the cheque or order he advised the authority in writing that in his opinion the payment was contrary to law; or
 - (b) in the case of a member of the authority, that the payment was made in pursuance of an order of the authority or of an authorised committee thereof and that before he signed the cheque or order the authority had not been advised by any officer of the authority that in the opinion of that officer the payment was contrary to law.
- (5) The Commission shall, on making a recommendation under subsection (3) above in relation to a special report made to them with respect to the accounts of any local authority, forthwith send a copy of that recommendation to the authority and to any person to whom a copy of the special report was sent under section 102(4) of this Act.
- (6) At any hearing held by them under this section the Commission—
- (a) shall afford an opportunity of appearing before and being heard by the Commission to the representative of any local authority which is likely to be affected by any recommendation of the Commission and to, or to the representative of, any other person who is likely to be so affected;
 - (b) may require the attendance of members or officers of any local authority to give oral evidence to the Commission.
- (7) If any person wilfully or negligently fails to comply with any requirement of the Commission under paragraph (b) of subsection (6) above, he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £100.

104 Action by Secretary of State on recommendation by Commission under s. 103(3)

- (1) Where recommendations are made to the Secretary of State under section 103(3) of this Act the Secretary of State may make an order giving effect to any recommendation, with or without modifications, or may decline to make such an order.
- (2) The Secretary of State shall not make an order under subsection (1) above requiring a person to pay an amount to a local authority if the Secretary of State is satisfied that

that person acted reasonably or in the belief that his action was authorised by law, and the Secretary of State shall, in deciding whether or not to make such an order as aforesaid and, if he decides to make it, what amount to specify therein, have regard to all the circumstances of the case, including such information as may be available to him as to the means of any person concerned and his ability to pay any amount to the local authority.

- (3) Where by virtue of an order made under subsection (1) above two or more persons are required to pay an amount to a local authority, those persons shall, if the order so specifies, be liable jointly and severally to pay that amount to the authority.
- (4) The Secretary of State shall, on making an order under subsection (1) above requiring a person to pay an amount to a local authority, forthwith cause a copy of that order to be sent—
 - (a) to that person ;
 - (b) to the Commission ; and
 - (c) to that authority.
- (5) Any amount which, by virtue of an order made under subsection (1) above, is due to be paid by any person to a local authority shall be paid by that person to the authority within fourteen days of the date on which a copy of that order was sent to him under subsection (4) above; and, if that amount is not so paid, it shall be the duty of the Commission to recover the amount on behalf of the authority and if need be to institute proceedings for that purpose; and the authority shall reimburse the Commission for any expenses incurred by the Commission so far as not recovered from the person liable to pay the amount.
- (6) A local authority shall give effect to any direction given to them in an order under subsection (1) above.

105 Regulations as to accounts

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

- (2) Before making regulations under this section, the Secretary of State shall consult with such associations of local authorities as appear to him to be concerned.
- (3) If any person wilfully or negligently contravenes any provision of any regulations made under this section, contravention of which is declared by the regulations to be an offence, he shall be guilty of an offence and shall be liable on summary conviction, in the case of a first offence, to a fine not exceeding £20, and, in the case of a second or subsequent offence, to a fine not exceeding £50.
- (4) A statutory instrument containing regulations made by the Secretary of State under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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

- (1) The foregoing provisions of this Part of this Act and any regulations made by the Secretary of State under section 105 of this Act shall, subject to any necessary modifications, apply with respect to the following bodies, that is to say—
 - (a) any committee, joint committee or joint board all the members of which, other than any ex officio members, are appointed by one or more local authorities ;
 - (b) the trustees for any charity, foundation, mortification, or other purpose, where a local authority, or some members of such an authority as such, are the sole trustees for such charity, foundation, mortification or other purpose;
 - (c) any water development board within the meaning of the Water (Scotland) Act 1967 ;

as they apply with respect to a local authority; and any provision contained in any enactment with respect to such a committee, joint committee or joint board, or in any trust deed or other instrument regulating any such charity, foundation, mortification or other purpose as aforesaid, shall, so far as inconsistent herewith, cease to have effect:

Provided that this subsection shall not have effect in relation to a water development board within the meaning of the said Act of 1967 until 16th May 1975.

- (2) Where an officer of a body whose accounts are required to be audited in accordance with this Part of this Act receives any money or other property on behalf of that body, or receives any money or other property for which he ought to account to that body, the accounts of that officer shall be audited by the auditor of the accounts of the body, and sections 96 to 105 of this Act and any regulations made by the Secretary of State under section 105 of this Act shall, subject to any necessary modifications, apply accordingly to those accounts and that audit.