



# Audit Commission Act 1998

## 1998 CHAPTER 18

### PART II

#### ACCOUNTS AND AUDIT OF PUBLIC BODIES

##### *Public inspection etc. and action by the auditor*

#### **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

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*Status: This is the original version (as it was originally enacted).*

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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—
- (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.