

# **PUBLIC FINANCE AND ACCOUNTABILITY (SCOTLAND) ACT 2000**

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## **EXPLANATORY NOTES**

### **THE ACT**

#### ***Schedule 4: Modification of Enactments Relating to Part 2***

#### **General Purpose**

168. This schedule is for the most part intended to provide consistency in the audit arrangements for a wide range of public bodies. It provides for the specified bodies (other than local authorities) to submit their accounts to the Scottish Ministers, who in turn will be required to send them to the Auditor General for Scotland. The accounts will then be audited in accordance with the standard audit provisions made in sections 21 and 22 of this Act.
169. The effect is to replace current provisions which require auditing by, variously, the Comptroller and Auditor General (although section 120 of the Scotland Act will amend that to the Auditor General), auditors appointed by the Secretary of State, and auditors appointed by bodies themselves. In the case of health service bodies, provision is made for their accounts to be submitted to the Scottish Ministers (for auditing by the Auditor General) rather than to the Accounts Commission as is the current position.
170. The position of local authorities is unchanged; they will continue to be required to send their accounts to the Accounts Commission for auditing. The bodies affected by the amendments in the schedule are-
- (a) the Board of Trustees of the National Galleries of Scotland (paragraph 1);
  - (b) the Board of Trustees of the National Library of Scotland (paragraph 2);
  - (c) the Scottish Hospitals Endowments Research Trust (paragraph 4(2));
  - (d) health service bodies (Health Boards, NHS Trusts, the Common Services Agency, the Mental Welfare Commission, the State Hospital Management Committee and others to which the National Health Service (Scotland) Act 1978 is applied) (paragraph 4(3));
  - (e) the Board of Trustees of the National Museums of Scotland (paragraph 5(2));
  - (f) the Board of Trustees of the Royal Botanic Garden, Edinburgh (paragraph 5(3));
  - (g) the Scottish Legal Aid Board (paragraph 6);
  - (h) Scottish Homes (paragraph 7);
  - (i) Scottish Enterprise and Highlands and Islands Enterprise (paragraph 9);
  - (j) Scottish Natural Heritage (paragraph 10);

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- (k) the Scottish Further Education Funding Council, the Scottish Higher Education Funding Council and boards of management of further education colleges (paragraph 11);
  - (l) new water and sewerage authorities (paragraph 12(2));
  - (m) the Scottish Children's Reporter Administration (paragraph 12(3));
  - (n) the Water Industry Commissioner for Scotland (paragraph 12(4));
  - (o) the Scottish Environment Protection Agency (paragraph 13);
  - (p) the Scottish Criminal Cases Review Commission (paragraph 14); and
  - (q) the Scottish Qualifications Authority (paragraph 15).
171. The schedule also makes various amendments to Part VII of the Local Government (Scotland) Act 1973 that deal with the Accounts Commission for Scotland. The main changes are to reflect the creation of Audit Scotland and the transfer of responsibility for the audit of health service bodies to the Auditor General. As a consequence of the establishment of this body, the Accounts Commission will no longer employ staff, incur expenditure or charge fees. All their costs will be met by Audit Scotland and the staff of that body will provide such assistance and support as the Accounts Commission requires. Audit Scotland will also determine charges to be applied in respect of work relating to local authorities. Accordingly, all provisions relating to the Accounts Commission's powers to appoint staff, incur expenditure and charge fees are repealed. The schedule also removes from the Commission the function of auditing accounts or undertaking studies in respect of health service bodies. These functions will instead fall to the Auditor General. The schedule also makes amendments to the minimum and maximum number of Commissioners that the Scottish Ministers may appoint. The following note shows the effect of the amendments to the 1973 Act.

#### Local Government (Scotland) Act 1973

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

#### *"Accounts and audit*

#### **96 Accounts and audit**

- (1) Every local authority shall keep accounts of all transactions relating to all funds of the authority and, subject to any provision contained in regulations made under section 105 of this Act, the accounts of the general fund of a local authority shall comprise such current, capital and borrowing accounts as may be necessary for the purpose of distinguishing transactions for different purposes.
- (2) All accounts of a local authority shall be made up in respect of each financial year.
- (3) Every local authority shall, in addition to preparing accounts in respect of any financial year, prepare in duplicate an abstract of the accounts for that year.
- (4) The accounts of every local authority in respect of any financial year shall be audited by a professional accountant, who is either a member of the staff of Audit Scotland an officer of the Accounts Commission for Scotland or is an approved auditor appointed by the Commission in accordance with the provisions of this Part of this Act.
- (5) The financial year of a local authority shall be the period of twelve months ending with 31st March; and references in this Act and in any other enactment (whether passed or

made before or after the passing of this Act) to the financial year of a local authority shall be construed in accordance with the provisions of this subsection.

- (6) The [*Scottish Ministers*] may by order make provision amending, repealing or revoking, with or without savings, any enactment which is inconsistent with or superseded by subsection (5) above; but no order under this subsection shall have effect unless it is approved by a resolution of [*the Scottish Parliament*] .

## **97 Establishment of Accounts Commission for Scotland.**

- (1) There shall be established a body, to be known as the Accounts Commission for Scotland (hereafter in this Part of this Act referred to as “the Commission”), which shall consist of such number of members, not being more than twelve fifteen or less than six eleven, as the [*Scottish Ministers*] may determine, and the members shall be appointed by the [*Scottish Ministers*] after consultation with such associations of local authorities and such organisations connected with the health service as appear to [*them*] to be concerned and with such other organisations or persons as [*they*] may think appropriate.
- (2) The Commission shall have the following functions, that is to say -
- (a) securing the audit of all accounts of -
    - (i) local authorities;
    - (ii) the bodies mentioned in section 86(1)(a) to (c) of the National Health Service (Scotland) Act 1978;
    - (iii) . . .
    - (iv) the Mental Welfare Commission for Scotland; and
    - ((v) any State Hospital Management Committee constituted under section 91 of the Mental Health (Scotland) Act 1984, in accordance with the provisions of this Part of the Act;
  - (b) considering all reports made in accordance with the said provisions and investigating all matters raised by any such report;
  - (c) making recommendations to the [*Scottish Ministers*] and to local authorities or, as the case may be, health service bodies in accordance with the said provisions;
  - (d) advising the [*Scottish Ministers*] on any matter relating to the accounting of local authorities or health service bodies which [*they*] may refer to them for advice and
  - (e) functions conferred by sections 97A and 97B of this Act.
- (2AA) Any function of the Commission may be exercised on behalf of the Commission by any person (whether or not a member of the staff of Audit Scotland) authorised by the Commission to do so.
- (2AB) Subsection (2AA) above does not apply in relation to the following functions-
- (a) considering reports in pursuance of subsection (2)(b) above,
  - (b) appointing an auditor under subsection (6) below,
  - (c) deciding who is to audit any account, or class of account, in pursuance of this Part of this Act,
  - (d) deciding whether to undertake or promote a study under section 97A or 105A of this Act.
- (2AC) Subsections (2AA) and (2AB) above do not affect the responsibility of the Commission for the exercise of their functions.
- (2A) . . .
- (2B) In this Part of the Act -
- “health service body” means a body referred to in subsection (2)(a)(ii) to (v) above; and

...

- (3) The [Scottish Ministers] may, after consultation, with the Commission, with such associations of local authorities and such organisations connected with the health service as appear to [them] to be concerned and with such other organisations or persons as [they] may think appropriate, give to the Commission directions of a general character as to the discharge of their functions, and the Commission shall give effect to any direction so given.
- (4) There shall be a Controller of Audit who shall be appointed by the Commission after consultation with, and subject to the approval of, the [Scottish Ministers] , and the Commission may appoint such other officers, and may appoint such agents, as they may determine.
- (4AA) The Controller of Audit shall, by virtue of appointment as such, be a member of the staff of Audit Scotland unless that person is also the Auditor General for Scotland.
- (4A) It shall be the duty of the Commission to make, by such date as Secretary of State may determine, an offer of employment by the Commission to each person employed in the civil service of the State in connection with the audit of the accounts of any health service body whose name is notified to the Commission by the Secretary of State for the purposes of this subsection; and the terms of the offer must be such that they are, taken as a whole, not less favourable to the person to whom the offer is made than the terms on which he is employed on the date on which the offer is made.
- (4B) An offer made in pursuance of subsection (4A) above shall not be revocable during the period of three months beginning with the date on which it is made.
- (4C) Where a person becomes an officer of the Commission in consequence of subsection (4A) above, then, for the purposes of the Employment Protection (Consolidation) Act 1978, his period of employment by the Commission and the change of employment shall not break the continuity of the period of employment.
- (4D) Where a person ceases to be employed as mentioned in subsection (4A) above -
- (a) on becoming an officer of the Commission in consequence of an offer made in pursuance of that subsection; or
  - (b) having unreasonably refused such an offer,
- he shall not, on ceasing to be so employed, be treated for the purposes of any scheme under section 1 of the Superannuation Act 1972 as having been retired on redundancy.
- (4E) The Secretary of State may supply to the Commission any information held by him which relates to housing benefit or council tax benefit and which appears to him to be relevant to the exercise of any of the functions of the Commission.
- (5) The provisions of Schedule 8 to this Act shall have effect in relation to the Commission.
- (6) In this Part of this Act “auditor” includes (a) the Controller of Audit, (b) members of the staff of Audit Scotland officers of the Commission, being professional accountants, and (c) auditors appointed by the Commission for the purpose of conducting audits or, as the case may be, a particular audit under this Part of this Act, or a person who is, within the period of five years beginning with the relevant date, approved by the Secretary of State, acting on the recommendation of the Commission and whose approval is not (whether during that period or after its expiry) withdrawn by the Secretary of State acting on such recommendation.
- (6A) In subsection (6) above, “the relevant date” means the date appointed for the coming into force of paragraph 3(3) of Schedule 7 to the National Health Service and Community Care Act 1990.

- (7) A person shall not be appointed as auditor by the Commission under subsection (6) above unless -
- (a) he is eligible for appointment as a company auditor under section 25 of the Companies Act 1989; or
  - (b) he is a member of the Chartered Institute of Public Finance and Accountancy or of any other body of accounts established in the United Kingdom and for the time being approved by the [*Scottish Ministers*] for the purposes of this subsection.

**97A Studies for improving economy etc in services**

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

**97B Furnishing of information and documents to the Commission**

- (1) Without prejudice to any other provision of this Part of this Act, the Commission may require any body whose accounts are required to be audited in accordance with this Part of this Act, and any officer or member of any such body, to furnish the Commission or any person authorised by it with all such information as the Commission or that person may reasonably require for the discharge of the functions under this Part of this Act of the Commission or of that person, including the carrying out of any study under section 97A of this Act.
- (2) Any person who without reasonable excuse fails to comply with a requirement imposed by subsection (1) above shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**98 Expenses and accounts of Commission**

- (1) The Commission shall have power to incur such expenses as appear to them to be necessary or expedient for the proper discharge of their functions, and such expenses shall be met by Audit Scotland
  - (a) the Secretary of State may, with the consent of the Treasury, pay to the Commission relating to their functions with respect to local authorities grants of such amounts, at such times and subject to such conditions as he may determine in respect of expenses incurred by the Commission as aforesaid;
  - (b) such part of the expenses of the Commission as it not met by grants under paragraph (a) above shall be met by local authorities in accordance with regulations made by the Secretary of State after consultation with such associations of local authorities as appear to him to be concerned;

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

## **99 General duties of auditors**

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

- (a) the accounts have been prepared in accordance with regulations made under section 105 of this Act or, in the case of a health service body, directions under section 86(3) of the National Health Service (Scotland) Act 1978 and comply with the requirements of all other enactments and instruments applicable to the accounts;
- (b) proper accounting practices have been observed in the preparation of the accounts;
- (c) that the local authority or health service body has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources; and
- (d) in a case where that body are required to publish information in pursuance of a direction under section 1 of the Local Government Act 1992 (publication of performance information), that body have made such arrangements for collecting and recording the information, and for publishing it, as are required for the performance of their duties under that section.

## **100 Auditor’s right of access to documents**

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

for providing any such information or explanation, to require any such officer or other person to attend before him in person and produce any such documents.

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

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

- (1) At each audit under this Part of this Act of a local authority's accounts, any persons interested may inspect the accounts to be audited and all books, deeds, contracts, bills, vouchers and receipts relating thereto and make copies of all or any part of the accounts and those other documents.
- (2) Any person interested may object to the accounts of a local authority or to any part of those accounts by -
  - (a) sending his objection in writing, together with a statement of the grounds thereof, to the auditor, and
  - (b) sending a copy of that objection and statement to the authority and to any officer of the authority who may be concerned.
- (3) Where any person objects under subsection (2) above to the accounts of a local authority, the auditor shall, if so requested by that person or authority or by any officer of the authority who may be concerned, afford to that person or authority or officer, as the case may be, an opportunity of appearing before and being heard by the auditor with respect to that objection; and any such person or officer may so appear and be heard either personally or by a representative.
- (4) Within fourteen days of the completion of the audit of the accounts of a local authority the auditor shall place on each duplicate abstract of those accounts prepared by the authority under section 96(3) of this Act a certificate, in such form as the Commission may direct, to the effect that he has audited the accounts in accordance with the provisions of this Part of this Act; and the auditor shall, on so certifying, forthwith send one duplicate abstract of the accounts to the Commission and the other duplicate abstract to the local authority.
- (5) Within 14 days of the completion of the audit of the accounts of a health service body the auditor shall place on any abstract of those accounts prepared by the health service body by virtue of section 86 of the National Health Service (Scotland) Act 1978 a certificate, in such form as the Commission may direct, to the effect that he has audited the accounts in accordance with the provisions of this Part of this Act: and the auditor shall, on so certifying, forthwith send copies of the abstract of the accounts to the Commission, the Secretary of State and the health service body.

**101A Reference of social security matters to Secretary of State**

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

**102 Reports to Commission by Controller of Audit**

- (1) The Controller of Audit shall make to the Commission such reports as they may require with respect to the accounts of local authorities and health service bodies audited under this Part of this Act and shall send a copy of any report so made to any local authority or health service body which is named in that report and may send a copy of any report so made to any other person he thinks fit.
- (2) Without prejudice to subsection (1) above, the Controller of Audit may make a report to the Commission on any matters arising out of or in connection with the accounts of a local authority in order that those matters may be considered by the local authority concerned or brought to the attention of the public, and shall send a copy of any report so made to any local authority which is named in that report and may send a copy of any report so made to any other person he thinks fit.
- (2A) A local authority shall, forth with upon their receiving a copy of a report sent to them under subsection (1) or (2) above, supply a copy of that report to each member of the authority and make additional copies available for public inspection.
- (3) Without prejudice to subsection (1) above, if the Controller of Audit, having considered any matter arising out of the auditing under this Part of this Act of the accounts of any local authority and having made such further inquiries (if any) as he may think fit -
  - (a) is of the opinion -
    - (i) that any item of account is contrary to law, or
    - (ii) that there has been a failure on the part of any person to bring into account any sum which ought to have been brought into account, or
    - (iii) that any loss has been incurred or deficiency caused by the negligence or misconduct of any person or by the failure of the authority to carry out any duty imposed on them by any enactment; or
  - (b) is of the opinion that any sum which ought to have been credited or debited to one account of the authority has been credited or, as the case may be debited to another account of the authority; and
  - (c) is not satisfied that the authority has taken or is taking such steps as may be necessary to remedy the matter;

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

- (4) The Controller of Audit shall, on making a special report under subsection (3) above with respect to the accounts of any local authority, forthwith send a copy of that special report -
  - (a) to that authority;
  - (b) to any officer of the authority who may be concerned;
  - (c) if the matter raised by the special report has been made the subject of objection under section 101 of this Act, to the person making that objection;
  - (d) to any other person who in his opinion may be affected thereby.
- (5) Without prejudice to subsection (1) above and section 104A(2) of this Act, the Controller of Audit may make a report to the Commission on any matters arising out of or in connection with the accounts of a health service body and shall send a copy of any report so made to any health service body which is named in that report and to the Secretary of State.



**103 Action by Commission on reports by Controller of Audit**

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

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- (a) shall afford an opportunity of appearing before and being heard by the Commission to the representative of any local authority which is likely to be affected by any recommendation of the Commission and to, or to the representative of, any other person who is likely to be so affected;
  - (b) may require the attendance of members or officers, or former members or officers, of any local authority to give oral evidence to the Commission; and
  - (c) may pay to any person attending a hearing under this section such expenses as they think fit.
- (7) If any person wilfully or negligently fails to comply with any requirement of the Commission under paragraph (b) of subsection (6) above, he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

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

- (1) Where recommendations are made to the [*Scottish Ministers*] under section 103(3) of this Act the [*Scottish Ministers*] may make an order giving effect to any recommendation, with out without modifications, or may decline to make such an order.
- (2) The [*Scottish Ministers*] shall not make an order under subsection (1) above requiring a person to pay an amount to a local authority if the [*Scottish Ministers*] are satisfied that the [*Scottish Ministers*] shall, in deciding whether or not to make such an order as aforesaid and, if [*they*] decide to make it, what amount to specify therein, have regard to all the circumstances of the case, including such information as may be available to [*them*] as to the means of any person concerned and his ability to pay any amount to the local authority.
- (3) Where by virtue of an order made under subsection (1) above two or more persons are required to pay an amount to a local authority, those persons shall, if the order so specifies, be liable jointly and severally to pay that amount to the authority.
- (4) The [*Scottish Ministers*] shall, on making an order under subsection (1) above requiring a person to pay an amount to a local authority, forthwith cause a copy of that order to be sent -
  - (a) to that person;
  - (b) to the Commission; and
  - (c) to that authority.
- (5) Any amount which, by virtue of an order made under subsection (1) above, is due to be paid by any person to a local authority shall be paid by that person to the authority within fourteen days of the date on which a copy of that order was sent to him under subsection (4) above; and, if that amount is not so paid, it shall be the duty of the Commission to recover the amount on behalf of the authority and if need be to institute proceedings for that purpose; and the authority shall reimburse the Commission for any expenses incurred by the Commission so far as not recovered from the person liable to pay the amount.
- (6) A local authority shall give effect to any direction given to them in an order under subsection (1) above.

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

- (1) Where the auditor of the accounts of a health service body has reason to believe that the body, or any officer of the body -
  - (a) has made a decision which involves the incurring of expenditure which is unlawful; or

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

## **105 Regulations as to accounts**

- (1) The [*Scottish Ministers*] may by regulations under this section make such provision as appears to [*them*] to be necessary or expedient for the purpose of rendering sections 96 to 104 of this Act of full effect and, without prejudice to the foregoing generality, such regulations may contain provisions with respect to the following matters, that is to say –
- (a) the form, preparation, keeping and authentication of accounts of local authorities and of any abstract of such accounts;
  - (b) the date in each year before which such accounts and abstract are to be authenticated on behalf of a local authority;
  - (c) the deposit by a local authority, within such period as may be specified in the regulations, of copies of such abstract at the offices of the authority or at any other place, and the publication by the authority of information with respect to such accounts;
  - (d) the exercise, within such period as may be specified in the regulations, of the rights of inspection and objection conferred by section 101 of this Act in relation to any such accounts and other documents, and the steps to be taken by a local authority for informing persons of those rights;
  - (e) the giving of public notice by a local authority of any order made in relation to them by the [*Scottish Ministers*] under section 104(1) of this Act.
- (2) Before making regulations under this section, the [*Scottish Ministers*] shall consult with such associations of local authorities as appear to him to be concerned.
- (3) If any person wilfully or negligently contravenes any provision of any regulations made under this section, contravention of which is declared by the regulations to be an offence, he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (4) A statutory instrument containing regulations made by the [*Scottish Ministers*] under this section shall be subject to annulment in pursuance of a resolution of [*the Scottish Parliament*].

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

- (1) The Secretary of State may request the Commission to conduct or assist the Secretary of State in conducting studies designed to improve economy, efficiency, effectiveness and quality of performance in the discharge by local authorities of functions relating to the administration of housing benefit and council tax benefit.
- (2) In the following provisions of this section ‘study’ means a study which the Commission are requested to conduct, or assist the Secretary of State in conducting, under subsection (1) above.
- (3) If the Commission require –

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- (a) any local authority included in a study; or
- (b) any officer or member of such an authority,

to supply the Commission or an authorised person with such information as is needed for the purposes of the study, the authority or officer or member shall supply the information.

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

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

- (1) The foregoing provisions of this Part of this Act and any regulations made by the [*Scottish Ministers*] under section 105 of this Act shall, subject to any necessary modifications, apply with respect to the following bodies, that is to say –
  - (a) any committee, joint committee or joint board all the members of which, other than any ex officio members, are appointed by one or more local authorities;
  - (b) the trustees for any charity, foundation, mortification, or other purpose, where a local authority, or some members of such an authority as such, as the sole trustees for such charity, foundation, mortification or other purpose;
  - (c) ...
- (2) Where an officer of a body whose accounts are required to be audited in accordance with this Part of this Act receives any money or other property on behalf of that body, or receives any money or other property for which he ought to account to that body, the accounts of that officer shall be audited by the auditor of the accounts of the body, and sections 96 to 105 of this Act and any regulations made by the [*Scottish Ministers*] under section 105 of this Act shall, subject to any necessary modifications, apply accordingly to those accounts and that audit.
- (3) In the application of subsection (2) above to an officer of a health service body, for the words from ‘96’ to ‘section 105’ there shall be substituted ‘97 to 104A’.
- (3) In the application of subsection (2) above to an officer of a health service body, for the words from ‘96’ to ‘section 105’ there shall be substituted ‘97 to 104A’.

“SCHEDULE 8

*(introduced by section 97)*

PROVISIONS AS TO THE ACCOUNTS COMMISSION FOR SCOTLAND

- 1 The Accounts Commission for Scotland (hereafter in this Schedule referred to as ‘the Commission’) shall be a body corporate and shall have a common seal.
- 2 (1) Each member of the Commission shall, subject to sub-paragraph (4) below, hold and vacate office in accordance with the terms of his appointment.
- (2) A member of the Commission may at any time resign office as such by notice in writing given to the [*Scottish Ministers*] .
- (3) A person who has held office as a member of the Commission shall be eligible for reappointment.
- (4) The [*Scottish Ministers*] may remove a person from membership of the Commission if he is satisfied that the person –
- (a) has had his estate sequestrated or has made a trust deed for behoof of his creditors or a composition contract;
- (b) is incapacitated by physical or mental illness;
- (c) has been absent from meetings of the Commission for a period longer than six consecutive months otherwise than for a reason approved by the [*Scottish Ministers*] ; or
- (d) is otherwise unable or unfit to discharge the function of a member.
- 3 (1) The [*Scottish Ministers*] shall appoint one of the members of the Commission to be chairman, and another of the members of the Commission to be deputy chairman, of the Commission.
- (2) The chairman or deputy chairman of the Commission may at any time resign office as such by notice in writing given to the [*Scottish Ministers*] .
- (3) If the chairman or deputy chairman of the Commission ceases to be a member of the Commission he shall cease to be chairman or, as the case may be, deputy chairman of the Commission.
- 3A There may be paid to any member of the Commission out of their funds such salary or fees and allowances as may be approved by the [*Scottish Ministers*]; and such salary, fees and allowances shall be paid by Audit Scotland.
- 4 (1) At any meeting of the Commission, including any hearing under section 103 of this Act, the quorum shall be four five or such larger number as the Commission may determine.
- (2) In the case of an equality of votes at any meeting of the Commission the person acting as chairman of the meeting shall have a second or casting vote.
- (3) The proceedings of the Commission shall not be invalidated by any vacancy in their membership or by any defect in the appointment of any person as a member, or as chairman or deputy chairman, of the Commission.
- (4) Subject to the foregoing provisions of this paragraph, the Commission shall have power to regulate their own procedure.
- 5 ...
- 6 (1) Officers and agents appointed by the Commission shall hold office on such reasonable terms and conditions, including conditions as to remuneration, as the Commission think fit.

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- (2) The Commission may pay such pensions, allowances or gratuities to or in respect of any of their officers on their retirement or death, or make such payments towards the provision of such pensions, allowances or gratuities, as the Commission think fit.

7 The Commission shall have power generally to do such acts as may appear to them to be necessary or expedient for the proper discharge of their functions and, without prejudice to the generality of the foregoing provision, the Commission may –

- (a) borrow, on the security of any property belonging to them, any money necessary for the purpose of meeting any expenses incurred by them or in connection with the discharge of their functions;
- (b) acquire such property (whether heritable or moveable) as may, in the opinion of the Commission, be necessary or desirable for the discharge of any of their functions, and dispose as they think fit of any property so acquired.