
STATUTORY INSTRUMENTS

2005 No. 1968

The Local Government (Northern Ireland) Order 2005

PART II

LOCAL GOVERNMENT AUDIT

Action by the auditor

Declaration that item of account is unlawful

19.—(1) Where it appears to a local government auditor at any audit held by him that any item of account is contrary to law, he may apply to the High Court for a declaration that the item is contrary to law except where it is sanctioned by the Department.

(2) On an application under this Article the High Court may make or refuse to make the declaration applied for, and where the High Court makes that declaration, then, subject to paragraph (3), it may also—

- (a) order that any person responsible for incurring or authorising any expenditure declared unlawful shall repay it in whole or in part to the body concerned and, where two or more persons are found to be responsible, that they shall be jointly and severally liable to repay it as aforesaid;
- (b) if any such expenditure 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 the body concerned, order him to be disqualified for being elected or being a member of a council for a specified period; and
- (c) order rectification of the accounts.

(3) The High Court shall not make an order under paragraph (2)(a) or (b) if it is satisfied that the person responsible for incurring or authorising any such 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 that expenditure or any part of it.

(4) Any person who has made an objection under Article 18(1)(a) and is aggrieved by a decision of an auditor not to apply for a declaration under this Article may—

- (a) not later than 6 weeks after he has been notified of the decision, require the auditor to state in writing the reasons for his decision; and
- (b) appeal against the decision to the High Court,

and on any such appeal the High Court shall have the same powers in relation to the item of account to which the objection relates as if the auditor had applied for a declaration under paragraph (1) in relation to the item of account.

(5) On an application or appeal under this Article relating to the accounts of a body, the High Court may make such order as it thinks fit for the payment by that 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.

Recovery of amount not accounted for, etc.

20.—(1) Where it appears to a local government auditor at any audit held by him—

- (a) that any person has failed to bring into account any sum which should have been so included and that the failure has not been sanctioned by the Department; or
- (b) that a loss has been incurred or deficiency caused by the wilful misconduct of any person,

he shall certify that the sum or, as the case may be, the amount of the loss or the deficiency is due from that person.

(2) Subject to paragraphs (4) and (5), both the auditor and the body concerned may recover for the benefit of the body a sum or amount so certified; and if the auditor certifies that any sum or amount is due from two or more persons, they shall be jointly and severally liable for that sum or amount.

(3) Any person who—

- (a) has made an objection under Article 18(1)(a) and is aggrieved by a decision of an auditor not to certify under this Article that a sum or amount is due from another person; or
- (b) is aggrieved by a decision of an auditor to certify under this Article that a sum or amount is due from him,

may not later than 6 weeks after he has been notified of the decision require the auditor to state in writing the reasons for his decision.

(4) Any such person who is aggrieved by such a decision may appeal against the decision to the High Court and—

- (a) in the case of a decision to certify that any sum or amount is due from any person, the High Court may confirm, vary or quash the decision and give any certificate which the auditor could have given;
- (b) in the case of a decision not to certify that any sum or amount is due from any person, the High Court may confirm the decision or quash it and give any certificate which the auditor could have given.

(5) If a certificate under this Article relates to a loss or deficiency caused by the wilful misconduct of a person who is, or was at the time of such misconduct, a member of the council concerned and the amount certified to be due from him exceeds £2,000, that person shall be disqualified for being elected or being a member of a council for the period of 5 years beginning on—

- (a) the ordinary date on which the period allowed for bringing an appeal against a decision to give the certificate expires; or
- (b) if such an appeal is brought, the date on which the appeal is finally disposed of or abandoned or fails for non-prosecution.

(6) A sum or other amount certified under this Article to be due from any person shall be payable within 14 days after the date of the 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.

(7) In any proceedings for the recovery of any sum or amount due from any person under this Article—

- (a) a certificate signed by a local government auditor stating that that sum or amount is due from a person specified in the certificate to a council so specified shall be conclusive evidence of that fact; and

(b) any certificate purporting to be so signed shall be taken to have been so signed unless the contrary is proved.

(8) On an appeal under this Article relating to the accounts of a body the High Court may make such order as the High Court 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.

(9) Any expenses incurred by an auditor in recovering a sum or other amount certified under this Article to be due in connection with the accounts of a body shall, so far as not recovered from any other source, be recoverable from that body unless the High Court otherwise directs.

Power of auditor to apply for judicial review

21.—(1) Subject to section 18(2)(a) of the Judicature (Northern Ireland) Act 1978 (c. 23) (no application for judicial review without leave) a local government auditor may make an application for judicial review with respect to—

- (a) any decision of a local government body, or
- (b) any failure by a local government body to act,

if it is reasonable to believe that the decision or failure would have an effect on the accounts of that body.

(2) The existence of the powers conferred on a local government auditor under this Part shall not be regarded as a ground for refusing—

- (a) an application falling within paragraph (1); or
- (b) an application for leave to make such an application.

(3) On an application for judicial review made as mentioned in paragraph (1), the High Court may make such order as it thinks fit for the payment by the body to whose decision or failure the application relates of expenses incurred by the local government auditor in connection with the application.