



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 [^{F1}Accounts Commission for Scotland] or is an approved auditor appointed by the Commission in accordance with the provisions of this Part of this Act.
- [^{F2}(5) The financial year of a local authority shall be the period of twelve months ending with 31st March ^{F3} . . . ; 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 Secretary of State 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make provision amending, repealing or revoking, with or without savings, any enactment which is inconsistent with or superseded by subsection (5) above; but no order under this subsection shall have effect unless it is approved by a resolution of each House of Parliament.]

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Textual Amendments

- F1** Words “Accounts Commission for Scotland” substituted (1.12.1994) for words “Commission for Local Authority Accounts” by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\), s. 36\(1\), Sch. 7 para. 2; S.I. 1994/2658, art. 3\(e\)](#)
- F2** [S. 96\(5\)\(6\)](#) substituted for s. 96(5) by [Local Government \(Scotland\) Act 1975 \(c. 30\), s. 18](#)
- F3** Words in [s. 96\(5\)](#) repealed (1.4.1995) by [1994 c. 39, s. 180\(2\), Sch. 14; S.I. 1995/702, art. 3\(e\), Sch. 1](#)

Modifications etc. (not altering text)

- C1** [S. 96](#) applied (*temp.* from 6.4.1995 until 1.4.1996) by [S.I. 1995/789, art. 2, Sch. para. 3](#)
- C2** [S. 96\(1\)\(2\)-\(4\)](#) applied (6.3.1992) by [Local Government Finance Act 1992 \(c. 14\), s. 107, Sch. 11 Pt. III para. 25.](#)
- C3** [S. 96\(2\)-\(4\)](#) extended by [Abolition of Domestic Rates Etc. \(Scotland\) Act 1987 \(c. 47, SIF 81:2, 103:2\), s. 25\(2\), Sch. 5 Pt. III para. 24](#)

97 Establishment of Commission for Local Authority Accounts in Scotland.

- (1) There shall be established a body, to be known as the [^{F4}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 [^{F5}fifteen] or less than [^{F6}eleven], 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 [^{F7}and such organisations connected with the health service] 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
 - [^{F8}(i)] local authorities
 - [^{F9}(ii)] the bodies mentioned in section 86(1)(a) to (c) of the National Health Service (Scotland) Act 1978;
 - (iii) the members of every recognised fund-holding practice;
 - (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 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 [^{F10}or, as the case may be, health service bodies] in accordance with the said provisions; . . . [^{F11}
 - (d) advising the Secretary of State on any matter relating to the accounting of local authorities [^{F12}or health service bodies] which he may refer to them for advice [^{F13}and
 - (e) functions conferred by sections 97A and 97B of this Act.]
- [^{F14}(2A) Subject to section 100(1A) of this Act, in relation to the members of a recognised fund-holding practice, any reference in this Part of this Act to their accounts is a reference only to the accounts relating to allotted sums paid to them.

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(2B) In this Part of this Act—

“health service body” means a body referred to in subsection (2)(a)(ii) to (v) above; and

“recognised fund-holding practice” and “allotted sum” have the same meanings as in section 87B of the National Health Service (Scotland) Act 1978.]

(3) The Secretary of State may, after consultation with the Commission, with such associations of local authorities [^{F15}and such organisations connected with the health service] 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.

[^{F16}(4A) It shall be the duty of the Commission to make, by such date as the 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 in the civil service of the State shall count as a 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.]

(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 [^{F17}(a)] the Controller of Audit, [^{F17}(b)] officers of the Commission, being professional accountants, and [^{F17}(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, ^{F18} . . . [^{F19}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.

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(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.]

[^{F20}(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 Secretary of State for the purposes of this subsection.]

Textual Amendments

- F4** Words in s. 97(1) substituted (1.12.1994) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 36(1), **Sch. 7 para. 3(2)(a)**; S.I. 1994/2658, **art. 3(d)**
- F5** Word in s. 97(1) substituted (1.12.1994) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 36(1), **Sch. 7 para. 3(2)(b)**; S.I. 1994/2658, **art. 3(d)**
- F6** Word in s. 97(1) substituted (1.12.1994) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 36(1), **Sch. 7 para. 3(2)(c)**; S.I. 1994/2658, **art. 3(d)**
- F7** Words in s. 97(1) inserted (24.10.1994) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 36(1), **Sch. 7 para. 3(2)(d)**; S.I. 1994/2658, **art. 2(c)**
- F8** “S. 97(2)(a)(i)” inserted (1.4.1995) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 36(1), **Sch. 7 para. 3(3)(a)(i)**; S.I. 1994/2658, **art. 4(a)**
- F9** S. 97(2)(a)(ii)–(v) inserted (1.4.1995) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 36(1), **Sch. 7 para. 3(3)(a)(ii)**; S.I. 1994/2658, **art. 4(a)**
- F10** Words in s. 97(2)(c) inserted (1.4.1995) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 36(1), **Sch. 7 para. 3(3)(b)**; S.I. 1994/2658, **art. 4(a)**
- F11** Word repealed by Local Government Act 1988 (c. 9, SIF 81:1, 2), **s. 35(2)**
- F12** Words in s. 97(2)(d) inserted (1.4.1995) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 36(1), **Sch. 7 para. 3(3)(c)**; S.I. 1994/2658, **art. 4(a)**
- F13** Word “and” and s. 97(2)(e) added by Local Government Act 1988 (c. 9, SIF 81:1, 2), **s. 35(2)**
- F14** S. 97(2A)(2B) inserted (1.4.1995) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 36(1), **Sch. 7 para. 3(4)**; S.I. 1994/2658, **art. 4(a)**
- F15** Words in s. 97(3) inserted (1.12.1994) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 36(1), **Sch. 7 para. 3(5)**; S.I. 1994/2658, **art. 3(d)**
- F16** S. 97(4A)–(4D) inserted (24.10.1994) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 36(1), **Sch. 7 para. 3(6)**; S.I. 1994/2658, **art. 2(c)**
- F17** Word inserted by Local Government (Scotland) Act 1975 (c. 30), **Sch. 6 Pt. II para. 48**
- F18** Words in s. 97(6) omitted (1.10.1991) by virtue of S.I. 1991/1997, reg. 2, **Sch. para. 23(a)** (with reg. 4).
- F19** Words in s. 97(6) and (6A) added (1.4.1995) at the end of subsection (6) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 36(1), **Sch. 7 para. 3(7)**; S.I. 1994/2658, **art. 4(a)**
- F20** S. 97(7) substituted (1.10.1991) by S.I. 1991/1997, reg. 2, **Sch. para. 23(b)** (with reg. 4).

Modifications etc. (not altering text)

- C4** S. 97 applied (*temp.* from 6.4.1995 until 1.4.1996) by S.I. 1995/789, art. 2, **Sch. para. 3**
- C5** S. 97(3) applied by Self-Governing Schools etc. (Scotland) Act 1989 (c. 39, SIF 41:2), **s. 77(4)**

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[^{F21}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 [^{F22}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 [^{F23}and, in the case of a health service body, the Commission shall also consult the Secretary of State and the Comptroller and Auditor General.]

Textual Amendments

- F21** Ss. 97A, 97B inserted by [Local Government Act 1988 \(c. 9, SIF 81:1, 2\)](#), **s. 35(3)**
- F22** Words inserted (1.4.1995) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 36(1), **Sch. 7 para. 4(2)**; S.I. 1994/2658, **art. 4(a)**
- F23** Words inserted (1.4.1995) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 36(1), **Sch. 7 para. 4(3)**; S.I. 1994/2658, **art. 4(a)**

Modifications etc. (not altering text)

- C6** S. 97A applied (*temp.* from 6.4.1995 until 1.4.1996) by S.I. 1995/789, **art. 2, Sch. para. 3**
- C7** S. 97A(1) extended (6.5.1992) by [Local Government Act 1992 \(c. 19\)](#), **ss. 3(3), 30(2)**.
- C8** S. 97A(3) excluded (6.5.1992) by [Local Government Act 1992 \(c. 19\)](#), **ss. 3(3), 30(2)**.

97B Furnishing of information and documents to 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.

Modifications etc. (not altering text)

- C9** S. 97B applied (*temp.* from 6.4.1995 until 1.4.1996) by S.I. 1995/789, **art. 2, Sch. para. 3**

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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 [^{F24}relating to their functions with respect to local authorities] 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.
 - [^{F25}(c) such part of the expenses of the Commission relating to their functions with respect to health service bodies as is 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) [^{F26}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 [^{F27}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.
- [^{F28}(7) In this section, “financial year” means the period of twelve months ending with 31st October in any year.]

Textual Amendments

- F24** Words inserted (1.4.1995) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 36(1), [Sch. 7 para. 5\(2\)\(a\)](#); S.I. 1994/2658, [art. 4\(a\)](#)
- F25** S. 98(1)(c) inserted (1.4.1995) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 36(1), [Sch. 7 para. 5\(2\)\(b\)](#); S.I. 1994/2658, [art. 4\(a\)](#)
- F26** Words inserted (1.4.1995) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 36(1), [Sch. 7 para. 5\(3\)](#); S.I. 1994/2658, [art. 4\(a\)](#)
- F27** Words in s. 98(5) substituted (29.4.1996 with first effect in relation to the period from 1.4.1997 to 31.10.1997) by [1996 c. 10, s. 4\(1\)\(a\)\(3\)](#); S.I. 1997/1979, [art. 2](#)
- F28** S. 98(7) inserted (29.4.1996 with first effect in relation to the period from 1.4.1997 to 31.10.1997) by [1996 c. 10, s. 4\(1\)\(b\)\(3\)](#); S.I. 1997/1979, [art. 2](#)

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99 General duties of auditors.

In auditing the accounts of any local authority [^{F29}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 [^{F30}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; 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.
- [^{F31}(c) that the local authority [^{F29}or health service body] has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources][^{F32}and
- ^{F32}(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.]

Textual Amendments

- F29** Words inserted (1.4.1995) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 36(1), **Sch. 7 para. 6(a)**; S.I. 1994/2658, **art. 4(a)**
- F30** Words inserted (1.4.1995) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 36(1), **Sch. 7 para. 6(b)**; S.I. 1994/2658, **art. 4(a)**
- F31** S. 99(c) added by Local Government Act 1988 (c. 9, SIF 81:1, 2), **s. 35(4)**
- F32** S. 99(d) and word 'and' preceding it inserted (6.5.1992) by Local Government Act 1992 (c. 19), **ss. 3(2), 30(2)**.

Modifications etc. (not altering text)

- C10** S. 99 applied (*temp.* from 6.4.1995 until 1.4.1996) by S.I. 1995/789, **art. 2, Sch. para. 3**

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 [^{F33}or health service body] 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 [^{F33}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.

[^{F34}(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.]

[^{F35}(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

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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 [F36 subsections (1) and (1B)] above, every local authority [F37 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) [F38 or (1B)] above, he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding [F39 level 3 on the standard scale]. . .

Textual Amendments

- F33** Words in s. 100(1) inserted (1.4.1995) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 36(1), **Sch. 7 para. 7(2)**; S.I. 1994/2658, **art. 4(a)**
- F34** S. 100(1A) inserted (1.4.1995) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 36(1), **Sch. 7 para. 7(3)**; S.I. 1994/2658, **art. 4(a)**
- F35** S. 100(1B) inserted (1.4.1995) by 1994 c. 39, s. 180(1), **Sch. 13 para. 92(25)(a)**; S.I. 1995/702, **art. 3(d)(ii)**
- F36** Words in s. 100(2) substituted (1.4.1995) by 1994 c. 39, s. 180(1), **Sch. 13 para. 92(25)(b)**; S.I. 1995/702, **art. 3(d)(ii)**
- F37** Words in s. 100(2) inserted (1.4.1995) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 36(1), **Sch. 7 para. 7(4)**; S.I. 1994/2658, **art. 4(a)**
- F38** Words in s. 100(3) inserted (1.4.1995) by 1994 c. 39, s. 180(1), **Sch. 13 para. 92(25)(c)(i)**; S.I. 1995/702, **art. 3(d)(ii)**
- F39** Words substituted by virtue of Criminal Procedure (Scotland) Act 1975 (c. 21), **ss. 289F, 289G** (as inserted by Criminal Justice Act 1982 (c. 48), **s. 54**)

Modifications etc. (not altering text)

- C11** S. 100 applied (*temp.* from 6.4.1995 until 1.4.1996) by S.I. 1995/789, **art. 2, Sch. para. 3**

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

[F40(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—
- sending his objection in writing, together with a statement of the grounds thereof, to the auditor, and
 - 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

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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.

- [^{F41}(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.]

Textual Amendments

F40 S. 101(1) substituted by [Rating and Valuation \(Amendment\) \(Scotland\) Act 1984 \(c. 31, SIF 103:2\)](#), s. **10(1)**

F41 S. 101(5) added (1.4.1995) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 36(1), [Sch. 7 para. 8](#); S.I. 1994/2658, [art. 4\(a\)](#)

Modifications etc. (not altering text)

C12 S. 101 extended by [Airports Act 1986 \(c. 31, SIF 9\)](#) ss. 24(3)(b), 85(4)

C13 S. 101 excluded by [Local Government and Housing Act 1989 \(c. 42, SIF 81:1, 2\)](#), s. **11(1)(4)**

C14 S. 101 applied (*temp.* from 6.4.1995 until 1.4.1996) by S.I. 1995/789, [art. 2](#), [Sch. para. 3](#)

VALID FROM 01/07/1997

[^{F42}**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.]

Textual Amendments

F42 S. 101A inserted (1.7.1997) by [1997 c. 47, s. 7\(3\)](#); S.I. 1997/1577, [art. 2](#), [Sch.](#)

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 [^{F43}and health service bodies] audited under this Part of this Act and shall send a copy of any report so made to any local

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authority [^{F44}or health service body] which is named in that report [^{F45}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 [^{F45}and may send a copy of any report so made to any other person he thinks fit].

[^{F46}(2A) A local authority shall, forthwith upon their receiving a copy of a report sent to them under subsection (1) or (2) above, supply a copy of that copy 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 [^{F47}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.

[^{F48}(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.]

Textual Amendments

F43 Words inserted (1.4.1995) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 36(1), [Sch. 7 para. 9\(2\)\(a\)](#); S.I. 1994/2658, [art. 4\(a\)](#)

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- F44** Words inserted (1.4.1995) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 36(1), **Sch. 7 para. 9(2)(b)**; S.I. 1994/2658, **art. 4(a)**
- F45** Words added by Local Government and Housing Act 1989 (c. 42, SIF 81:2), **s. 185(a)**
- F46** S. 102(2A) inserted by Local Government and Housing Act 1989 (c. 42, SIF 81:2), **s. 185(b)**
- F47** Words in s. 102(3) substituted (4.1.1995) by 1994 c. 39, s. 180(1), **Sch. 13 para. 92(26)**; S.I. 1994/2850, **art. 3(c)(Vii)**
- F48** S. 102(5) added (1.4.1995) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 36(1), **Sch. 7 para. 9(3)**; S.I. 1994/2658, **art. 4(a)**

Modifications etc. (not altering text)

- C15** S. 102 applied (*temp.* from 6.4.1995 until 1.4.1996) by S.I. 1995/789, **art. 2, Sch. para. 3**

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 [^{F49}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 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,

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- (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;
- [^{F50}(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 [^{F51}level 3 on the standard scale].

Textual Amendments

- F49** Words inserted (1.4.1995) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 36(1), [Sch. 7 para. 10](#); [S.I. 1994/2658](#), [art. 4\(a\)](#)
- F50** [S. 103\(6\)\(b\)\(c\)](#) substituted (4.1.1995) for s. 103(6)(b) by [1994 c. 39](#), s. 180(1), [Sch. 13 para. 92\(27\)](#); [S.I. 1994/2850](#), [art. 3\(c\)\(vii\)](#)
- F51** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21\)](#), [ss. 289F, 289G](#) (as inserted by [Criminal Justice Act 1982 \(c. 48\)](#), s. 54)

Modifications etc. (not altering text)

- C16** [S. 103](#) applied (*temp.* from 6.4.1995 until 1.4.1996) by [S.I. 1995/789](#) art. 2, Sch. para. 3

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VALID FROM 01/01/2002

[^{F52}103A Publication of special reports

The Commission may publish a special report made to it under section 102(3) of this Act, and may do so in whatever way and send it to whomever it thinks fit.]

Textual Amendments

F52 Ss. 103(A)-(J) inserted (1.1.2002) by 2000 asp 7, s. 33(3); S.S.I 2001/474 art. 3 (subject to transitional provisions in art. 4)

VALID FROM 01/01/2002

[^{F53}103B Action by Commission on receipt of special reports

- (1) On receiving a special report under section 102(3) of this Act from the Controller of Audit, the Commission may—
 - (a) direct the Controller to carry out further investigations;
 - (b) hold a hearing;
 - (c) state a case on any question of law arising on the special report for the opinion of the Court of Session;
 - (d) subject to subsections (2) and (3) below, do none of the above.
- (2) The Commission shall hold a hearing if requested to so in writing by—
 - (a) the local authority which was sent a copy of the report under section 102(3A) of this Act;
 - (b) any person, named or referred to in the report—
 - (i) as being to blame in connection with an item of account being contrary to law;
 - (ii) whose failure, negligence or misconduct is a subject of the report; or
 - (iii) who was sent a copy of the report under section 102(3A) of this Act.
- (3) The Commission shall state a case under subsection (1)(c) above if directed to do so by the Court of Session.]

Textual Amendments

F53 Ss. 103(A)-(J) inserted (1.1.2002) by 2000 asp 7, s. 33(3); S.S.I. 2001/474 art. 3 (subject to transitional provisions in art. 4)

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VALID FROM 01/01/2002

[^{F54}103C] Hearings on special reports

- (1) Subject to subsections (2) to (12) below, the procedure at a hearing held under section 103B(1)(b) of this Act shall be such as the Commission determines.
- (2) The Commission may, at any one hearing, consider—
 - (a) allegations of blame, in connection with an item of account being contrary to law, against; and
 - (b) failures, negligence or misconduct by, more than one officer or member of a local authority.
- (3) A hearing shall be conducted by not fewer than three members of the Commission selected by the chairman of the Commission.
- (4) Notwithstanding paragraph 4(1) of Schedule 8 to this Act, for the purposes of this section, the quorum for a meeting of the Commission shall be three.
- (5) The following—
 - (a) an officer or member—
 - (i) as to whom the question of blame in connection with an item of account being contrary to law is; or
 - (ii) whose alleged failure, negligence or misconduct is being considered by a hearing, is; and
 - (b) the local authority are, entitled to be heard at the hearing.
- (6) An officer or member entitled to be heard at a hearing shall be entitled to be heard either in person or represented by counsel or a solicitor or any other person.
- (7) The members of the Commission conducting a hearing may—
 - (a) require any person, including officers or members or former officers or members of any local authority, to attend the hearing, give evidence and produce documents;
 - (b) administer oaths.
- (8) A person shall not, however, be compelled to give any evidence or produce any documents which that person could not be compelled to give or produce in civil proceedings in the Court of Session.
- (9) A person who, without reasonable excuse, fails to comply with a requirement imposed under subsection (7)(a) above is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (10) The Commission may pay persons appearing at a hearing or attending it for the purpose of giving evidence or producing documents such expenses or allowances as it thinks fit.
- (11) A hearing shall be held in public unless the members of the Commission conducting it determine that it is in the public interest that it, or such part of it as they specify for the purposes of this subsection, be not so held.

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(12) In this section, “documents” includes information held by means of a computer or in any other electronic form.]

Textual Amendments

F54 Ss. 103(A)-(J) inserted (1.1.2002) by 2000 asp 7, s. 33(3); S.S.I 2001/474 art. 3 (subject to transitional provisions in art. 4)

Modifications etc. (not altering text)

C17 S. 103C applied (with modifications) (1.4.2003) by Local Government in Scotland Act 2003 (asp 1), ss. 4(1), 62(2); S.S.I. 2003/134, art. 2(1), Sch.

VALID FROM 01/01/2002

^{F55}103D Findings of hearings

The members of the Commission conducting a hearing under section 103B(1)(b) of this Act shall state their findings in writing and give a copy to—

- (a) any officer or member of the local authority who is or was blamed in connection with an item of account being contrary to law or whose failure, negligence or misconduct, or alleged failure, negligence or misconduct, was a subject of the hearing;
- (b) the local authority;
- (c) any other person the Commission considers should, under this paragraph, receive such a copy; and
- (d) any other person seeking a copy of those findings who has paid the Commission’s reasonable charge for providing such a copy.]

Textual Amendments

F55 Ss. 103(A)-(J) inserted (1.1.2002) by 2000 asp 7, s. 33(3); S.S.I 2001/474 art. 3 (subject to transitional provisions in art. 4)

Modifications etc. (not altering text)

C18 S. 103D applied (with modifications) (1.4.2003) by Local Government in Scotland Act 2003 (asp 1), ss. 4(1), 62(2); S.S.I. 2003/134, art. 2(1), Sch.

VALID FROM 01/01/2002

^{F56}103E Action by local authorities on receipt of findings under section 103D

- (1) A local authority receiving a copy of findings under section 103D of this Act shall consider those findings at a meeting of the authority within three months of receiving them or within such longer period as the Commission may specify in writing.

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- (2) The duty imposed on a local authority by subsection (1) above shall be discharged only by that authority and not by a committee or sub-committee or an officer.
- (3) Where findings received by a local authority contain recommendations under section 103F(3)(b) of this Act, the authority shall decide—
 - (a) whether to accept any or all of those recommendations;
 - (b) what, if any, action to take in response to those recommendations.
- (4) A meeting under subsection (1) above shall not be held unless, at least seven clear days before the meeting, there has been published, in a newspaper circulating in the area of the local authority concerned, a notice which—
 - (a) states the time and place of the meeting;
 - (b) indicates that the meeting is to be held in order to consider the findings of the Commission and any recommendations in those findings; and
 - (c) describes the nature of those findings and of any such recommendations.
- (5) The local authority shall, as soon as practicable after that meeting—
 - (a) notify the Commission of any decisions made in pursuance of subsection (3) above; and
 - (b) publish, in a newspaper circulating in the area of the local authority, a notice containing a summary, approved by the Commission, of any such decisions.
- (6) A notice under subsection (5)(b) above shall not need to summarise any decision made while the public were excluded from the meeting—
 - (a) under section 50A(2) of this Act (confidential matters) or in pursuance of a resolution under section 50A(4) of this Act (exempt information); but
 - (b) in a case where sections 50C and 50D of this Act (availability for inspection after meetings of minutes, background papers and other documents) apply in relation to the meeting, shall indicate the documents which, in relation to that meeting, are open for inspection in accordance with those sections.
- (7) This section is without prejudice to any other duties (so far as they relate to the subject-matter of findings or recommendations sent to the authority) which are imposed by or under Part VII of this Act, section 5 of the Local Government and Housing Act 1989 (c.42) (functions of monitoring officers) or any other enactment.]

Textual Amendments

F56 Ss. 103(A)-(J) inserted (1.1.2002) by 2000 asp 7, s. 33(3); S.S.I 2001/474 art. 3 (subject to transitional provisions in art. 4)

Modifications etc. (not altering text)

C19 S. 103E applied (1.4.2003) by Local Government in Scotland Act 2003 (asp 1), ss. 5(1), 62(2); S.S.I. 2003/134, art. 2(1), Sch.

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VALID FROM 01/01/2002

[^{F57}103F Action on finding of failure, negligence or misconduct

- (1) Where the members of the Commission conducting a hearing under section 103B(1) (b) of this Act find that—

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

they may, as appropriate, impose one of the sanctions specified in subsection (2) or make any of the recommendations in subsection (3) below.

- (2) The sanctions which may be imposed under subsection (1) above are—

- (a) censuring, but otherwise taking no action against, an officer or member of the authority;
- (b) suspending, for a period not exceeding one year, the entitlement of a member of a local authority to attend one or more but not all of the following—
 - (i) all meetings of the local authority;
 - (ii) all meetings of one or more committees or sub-committees of the local authority;
 - (iii) all meetings of any other body on which the member is a representative or nominee of the local authority;
- (c) suspending, for a period not exceeding one year, the entitlement of a member of a local authority to attend meetings of the local authority and of any committee or sub-committee thereof and of any other body on which the member is a representative or nominee of the local authority;
- (d) disqualifying a member of a local authority for a period not exceeding five years, from being, or from being nominated for election as, or from being elected, such a member.

- (3) In the case of a local authority, the Commission may—

- (a) make recommendations to the Scottish Ministers that they make an order directing the authority to make such rectification of their accounts as appears to the Commission necessary;
- (b) include in its findings any recommendations arising from those findings which the Commission think fit.

- (4) A period of suspension imposed under subsection (2)(b) or (c) above which would continue until or after the day of the next following ordinary election of members shall end at the beginning of that day.

- (5) Disqualification imposed under subsection (2)(d) above—

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- (a) has the effect of vacating the member's office; and
 - (b) extends to membership of committees and sub-committees of the local authority of which the member was a member and any joint committee, joint board or other body on which the member is a representative or nominee of the local authority.
- (6) The Commission shall, on making a recommendation under subsection (3)(a) above, forthwith send a copy of that recommendation to the local authority and to any person whom the Commission thinks fit.
- (7) Where the Commission make recommendations to the Scottish Ministers under subsection (3)(a) above, Ministers may make an order giving effect to any recommendation, with or without modifications, or may decline to make such an order.
- (8) A local authority shall give effect to any direction to them made in an order under subsection (7) above.]

Textual Amendments

F57 Ss. 103(A)-(J) inserted (1.1.2002) by 2000 asp 7, s. 33(3); S.S.I 2001/474 art. 3 (subject to transitional provisions in art. 4)

VALID FROM 01/01/2002

^{F58}103G Interim reports on investigations and action thereon

- (1) The Controller of Audit may submit an interim report on an investigation being conducted by that Controller under section 102(3) of this Act.
- (2) On receiving an interim report, the Commission, if it is satisfied—
 - (a) that the further conduct of the investigation is likely to be prejudiced if the sanction mentioned in subsection (3) below is not imposed; or
 - (b) that otherwise it would be in the public interest to impose that sanction, then it may impose that sanction.
- (3) That sanction is suspending the member of the local authority whose alleged blame in connection with an item of account being contrary to law or whose alleged failure, negligence or misconduct was the subject of the interim report from the entitlement set out in section 103F(2)(c) of this Act for a period not exceeding three months.
- (4) The Commission shall not require to hold a hearing before proceeding to impose that sanction, but shall give the member an opportunity to make representations on the allegations of blame, failure, negligence or misconduct and on the interim report.
- (5) The Commission shall put its decision under this section in writing and shall give a copy to—
 - (a) the member;
 - (b) the authority; and
 - (c) any other person seeking a copy of the decision who has paid the Commission's reasonable charges for providing such a copy.

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- (6) A period of suspension imposed under this section ends upon—
- (a) the issue of findings under section 103D of this Act that the member was not to blame or has not failed, been negligent or been guilty of misconduct;
 - (b) the imposition of a sanction under section 103F of this Act or a decision not to impose such a sanction; or, as the case may be,
 - (c) a decision by the Commission under section 103B of this Act not to hold a hearing.
- (7) A period of suspension imposed under subsection (2) above which would continue until or after the day of the next following ordinary election of members ends at the beginning of that day.
- (8) If, however, the member is re-elected at that election, the Commission may re-impose the suspension.
- (9) The period for which suspension may be re-imposed under subsection (8) above is that for which it would have continued to apply but for subsection (7) above.
- (10) On the expiry (otherwise than by operation of subsection (6) or (7) above) of a period of suspension, it may be renewed by the Commission for a period not exceeding three months and a renewed period may likewise be further renewed.
- (11) Where, but for the suspension under this section, a member would be entitled to receive basic allowance and special responsibility allowance from the authority, the suspension shall not affect that entitlement; but nothing in this subsection authorises the payment or reimbursement of travelling, subsistence or other allowances or expenses.
- (12) In subsection (11) above, “basic allowance” and “special responsibility allowance” are the respective allowances referred to in section 18(1)(a) and (c) of the Local Government and Housing Act 1989 (c.42).]

Textual Amendments

F58 Ss. 103(A)-(J) inserted (1.1.2002) by 2000 asp 7, s. 33(3); S.S.I 2001/474 art. 3 (subject to transitional provisions in art. 4)

VALID FROM 01/01/2002

[^{F59}103H] Protection from actions of defamation

- (1) For the purposes of the law of defamation, any statement made by the Commission or any of its agents or staff of Audit Scotland provided for the Commission under section 10(3) of the Public Finance and Accountability (Scotland) Act 2000 (asp 1) or by the Controller of Audit shall be absolutely privileged.
- (2) In subsection (1) above “statement” has the same meaning as in the Defamation Act 1996 (c.31).]

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Textual Amendments

F59 Ss. 103(A)-(J) inserted (1.1.2002) by 2000 asp 7, s. 33(3); S.S.I 2001/474 art. 3 (subject to transitional provisions in art. 4)

VALID FROM 01/01/2002

[^{F60}103J Appeals from Commission

- (1) An officer or member of a local authority—
 - (a) who is the subject of a finding under section 103F(1) of this Act;
 - (b) on whom a sanction under section 103F(2)(a), (b) or (c) of this Act has been imposed;
 - (c) who has been suspended under section 103G(2) of this Act,
 may appeal to the sheriff principal of the sheriffdom in which the authority has its principal office.
- (2) An appeal—
 - (a) under subsection (1)(a) above may be made on one or more of the following grounds—
 - (i) that the Commission’s finding was based on an error of law;
 - (ii) that there has been procedural impropriety in the conduct of any hearing held under section 103B(1)(b) of this Act;
 - (iii) that the Commission has acted unreasonably in the exercise of its discretion;
 - (iv) that the Commission’s finding was not supported by the facts found to be proved by the Commission;
 - (b) under subsection (1)(b) above may be made on one or more of the following grounds—
 - (i) that the sanction imposed was excessive;
 - (ii) that the Commission has acted unreasonably in the exercise of its discretion;
 - (c) under subsection (1)(c) above may be made only on the ground that the Commission has acted unreasonably in the exercise of its discretion.
- (3) An appeal under subsection (1) above shall be lodged within 21 days of—
 - (a) the sending of the finding under section 103F(1) of this Act to the officer or member;
 - (b) the imposition of the sanction under section 103F(2) of this Act; or, as the case may be,
 - (c) the imposition of suspension under section 103G(2) of this Act.
- (4) A finding made or sanction imposed by the Commission continues to have effect notwithstanding the lodging of an appeal under subsection (1) above.
- (5) The sheriff principal may—
 - (a) in an appeal under subsection (1)(a) above—
 - (i) confirm the finding under section 103F(1) of this Act;

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- (ii) quash the finding;
 - (iii) quash the finding and remit the matter to the Commission to reconsider its decision;
 - (b) in an appeal under subsection (1)(b) above—
 - (i) confirm the sanction;
 - (ii) quash the sanction and either substitute a lesser sanction or remit the matter back to the Commission;
 - (c) in an appeal under subsection (1)(c) above, quash the suspension;
 - (d) award expenses.
- (6) The decision of the sheriff principal under subsection (1) above is a final judgment for the purposes of section 28 (appeals to the Court of Session) of the Sheriff Courts (Scotland) Act 1907 (c.51).
- (7) In an appeal from the sheriff principal by virtue of subsection (6) above, the Court of Session has the powers specified in subsection (5) above.
- (8) The Commission may be a party to an appeal under subsection (1) above and in any appeal from the decision of the sheriff principal.]

Textual Amendments

F60 Ss. 103(A)-(J) inserted (1.1.2002) by 2000 asp 7, s. 33(3); S.S.I 2001/474 art. 3 (subject to transitional provisions in art. 4)

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

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(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.

Modifications etc. (not altering text)

C20 S. 104 applied (*temp.* from 6.4.1995 until 1.4.1996) by S.I. 1995/789, art. 2, Sch. para. 3

[^{F61}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
- (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.]

Textual Amendments

F61 S. 104A inserted (1.4.1995) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 36(1), Sch. 7 para. 11; S.I. 1994/2658, art. 4(a)

Modifications etc. (not altering text)

C21 S. 104A applied (*temp.* from 6.4.1995 until 1.4.1996) by S.I. 1995/789, art. 2, Sch. para. 3

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

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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 [^{F62}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 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 [^{F63}level 3 on the standard scale], and, in the case of a second or subsequent offence, to a fine not exceeding [^{F63}level 3 on the standard scale].
- (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.

Textual Amendments

F62 Words substituted by [Rating and Valuation \(Amendment\) \(Scotland\) Act 1984 \(c. 31, SIF 103:2\)](#), **s. 10(2)**

F63 Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21\)](#), **ss. 289E–289G** (as inserted by [Criminal Justice Act 1982 \(c. 48\)](#), **s. 54**)

Modifications etc. (not altering text)

C22 [S. 105](#) extended by [Airports Act 1986 \(c. 31, SIF 9\)](#), **ss. 24(3)(b)**, 85(4)

C23 [S. 105](#) applied (*temp.* from 6.4.1995 until 1.4.1996) by S.I. 1995/789, art. 2, **Sch. para. 3**

C24 [S. 105\(1\)](#) extended by [Abolition of Domestic Rates Etc. \(Scotland\) Act 1987 \(c. 47, SIF 81:2, 103:2\)](#), s. 25(2), **Sch. 5 Pt. III para. 24**
[S. 105\(1\)](#) applied (6.3.1992) by [Local Government Finance Act 1992 \(c. 14\)](#), s. 107, **Sch. 11 Pt. III para.25**.

C25 [S. 105\(1\)\(d\)](#) extended by [Local Government Act 1986 \(c. 10, SIF 81:1\)](#), **ss. 5(4)**, 6, 12

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VALID FROM 01/07/1997

[^{F64}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—
 - (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.]

Textual Amendments

F64 S. 105A inserted (1.7.1997) by 1997 c. 47, s. 7(4); S.I. 1997/1577, art. 2, Sch.

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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;

^{F65}(c)

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:

^{F65}

(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.

[^{F66}(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.”]

Textual Amendments

F65 S. 106(1)(c) and the proviso repealed (1.4.1996) by 1994 c. 39, s. 180(2), **Sch. 14** (with s. 90(2)); S.I. 1996/323, art. 4(1)(d), **Sch. 2**

F66 S. 106(3) added (1.4.1995) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 36(1), **Sch. 7 para. 12**; S.I. 1994/2658, **art. 4(a)**

Modifications etc. (not altering text)

C26 S. 106 excluded by Local Government and Housing Act 1989 (c.42, SIF 81:1, 2), s. **11(1)(4)**

C27 The “said Act of 1967” means Water (Scotland) Act 1967 (c. 78)

Status:

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