



Local Government Act 2000

2000 CHAPTER 22

PART V

MISCELLANEOUS

Surcharge etc.

90 Surcharge etc

- (1) The Audit Commission Act 1998 is amended as follows.
- (2) In section 17 (declaration that item of account is unlawful)—
 - (a) subsection (1)(b),
 - (b) in subsection (2), the words “subject to subsection (3)” and paragraphs (a) and (b), and
 - (c) subsections (3), (5)(b), (7) and (8),are omitted.
- (3) Section 18 (recovery of amount not accounted for etc.) is omitted.

91 Advisory notices

- (1) After section 19 of the Audit Commission Act 1998 there is inserted—

“19A Other bodies: advisory notices

- (1) The auditor for the time being of the accounts of a body subject to audit other than a health service body may issue a notice under this section (“an advisory notice”) if he has reason to believe that the body or an officer of the body—
 - (a) is about to make or has made a decision which involves or would involve the body incurring expenditure which is unlawful,

Status: This is the original version (as it was originally enacted).

- (b) is about to take or has begun to take a course of action which, if pursued to its conclusion, would be unlawful and likely to cause a loss or deficiency, or
- (c) is about to enter an item of account, the entry of which is unlawful.

(2) For the purposes of this section and section 19B the actions of—

- (a) a committee or sub-committee of a body, or
- (b) any other person (other than an officer) authorised to act on behalf of the body,

are to be treated as the actions of the body itself.

(3) An advisory notice is a notice which—

- (a) is addressed to the body or officer concerned,
- (b) specifies the paragraph of subsection (1) which is relevant and the decision, course of action or item of account to which the notice relates,
- (c) specifies that the notice will take effect on the day a copy of the notice is served on the person to whom it is addressed, and
- (d) requires the body or officer before—
 - (i) making or implementing the decision,
 - (ii) taking or continuing to take the course of action, or
 - (iii) entering the item of account,

(as the case may be) to give the person who is for the time being the auditor of the accounts of the body not less than the specified number of days' notice in writing of the intention of the body or officer to do that thing,

and in paragraph (d) the reference to the specified number is to such number not exceeding 21 as is specified in the notice.

(4) Where two or more auditors are appointed in relation to the accounts of any body—

- (a) the power to issue an advisory notice may be exercised by the auditors acting jointly or by such one of them as they may determine, and
- (b) in relation to such a notice, references in subsections (5) and (6) to the auditor are references to the auditor or auditors by whom the notice is issued.

(5) A copy of an advisory notice—

- (a) shall be served on the body to which, or to an officer of which, it is addressed,
- (b) in the case of a notice addressed to an officer, shall also be served on him, and
- (c) may be served on such other person or persons as the auditor considers appropriate.

(6) The auditor shall serve a statement of his reasons for the belief referred to in subsection (1) on the body concerned, and on any officer on whom a copy of the notice was served under subsection (5)(b), before the end of the period of 7 days beginning on the day on which a copy of the notice was served on the person to whom it is addressed.

- (7) Where this section requires any document to be served on an officer of a body, it shall be served on him by addressing it to him and delivering it to him or leaving it at, or sending it by post to, the office at which he is employed.
- (8) An advisory notice may at any time be withdrawn by the person who is for the time being the auditor in relation to the accounts of the body to which, or to an officer of which, the notice was addressed, and the auditor shall give notice in writing of the withdrawal to any body or person on whom a copy of the advisory notice was served under subsection (5).

19B Effect of an advisory notice

- (1) While an advisory notice has effect, it is not lawful for the body concerned or any officer of that body—
 - (a) where the notice relates to a decision, to make or implement the decision,
 - (b) where the notice relates to a course of action, to take or continue to take the course of action, or
 - (c) where the notice relates to an item of account, to enter the item of account,unless and until the conditions set out in subsection (2) are satisfied.
- (2) The conditions are—
 - (a) that the body has considered, in the light of the advisory notice and the statement under section 19A(6), the consequences of doing the thing mentioned in the paragraph of subsection (1) which is relevant,
 - (b) that the body or officer has given the person who is for the time being the auditor of the accounts of the body the period of notice in writing required by the advisory notice under section 19A(3)(d), and
 - (c) that that period has expired.
- (3) An advisory notice takes effect on the day on which a copy of the notice is served on the person to whom it is addressed, and ceases to have effect—
 - (a) where a statement of reasons is not served in accordance with subsection (6) of section 19A, at the end of the period specified in that subsection, or
 - (b) when it is withdrawn under section 19A(8).
- (4) Any expenses reasonably incurred by an auditor in or in connection with the issue of an advisory notice are recoverable by him from the body concerned.
- (5) In this section “the body concerned”, in relation to an advisory notice, means the body to which, or to any officer of which, the notice is addressed.
- (1) Where—
 - (a) before an advisory notice is served, a body enters into a contract to dispose of or acquire an interest in land, and
 - (b) before the disposal or acquisition is completed, an advisory notice takes effect as a result of which it is unlawful for the body to complete the disposal or acquisition,

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

the existence of the advisory notice does not prejudice any remedy in damages which may be available to any person by reason of the body's failure to complete the contract.

- (2) No action lies against an auditor in respect of loss or damage alleged to have been caused by reason of the issue of an advisory notice which was issued in good faith.”
- (2) Sections 20 to 23 of the Audit Commission Act 1998 (prohibition orders) cease to have effect.