



# Local Government (Scotland) Act 1947

## 1947 CHAPTER 43

### PART IV

#### OFFICERS.

##### *General.*

**96 Regard to be had to enactments relating to superannuation.**

In arranging the terms of service of an officer appointed under this Part of this Act, regard shall be had to the provisions of the Local Government Superannuation (Scotland) Act, 1937, or any other enactment or any scheme relating to superannuation allowances which is applicable to the officer, and any provision in this Act relating to the tenure of office of an officer under a local authority shall not affect any right or obligation of the officer to retire on attaining any specified age or on the happening of any specified event in pursuance of the said Act of 1937 or such other enactment or scheme.

**97 Local authority may regulate duties of officers, and &c.**

(1) A local authority may regulate the duties of officers employed by the authority under this Act or any other enactment or any statutory order and the relations of these officers to each other, so however that nothing done under this subsection shall be contrary to the provisions of this Act or any other enactment or any statutory order with respect to the employment of any officer for the purposes thereof.

(2) A local authority may suspend any officer of the authority:

Provided that this subsection shall not apply in the case of any officer of the authority with respect to whose suspension or removal from office provision is made by any other enactment.

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## **98 Security to be given by officers.**

- (1) Every local authority in the case of each of the treasurer, the collector, and such other officers as the Secretary of State may prescribe shall, and in the case of any other officer employed by them may, require the officer to obtain in name of the authority from any company accepted by the Court of Session as cautioner for a judicial factor appointed by the court security for the faithful execution of his office and for his duly accounting for all money or property which may be entrusted to him to such amount as the local authority think sufficient, not being less in the case of a treasurer or a collector of a county council or a town council than one thousand pounds.
- (2) The provisions of the foregoing subsection shall apply in the case of an officer of a local authority holding office at the commencement of this Act, except in so far as security has been provided by him which complies with that subsection.
- (3) If any officer of a local authority fails to provide security in accordance with subsection (1) of this section within three months after the date on which the authority have required him to do so, he shall be deemed to have resigned from his office at the expiration of the said period of three months.
- (4) A local authority may, in the case of a person who is not employed by them but who or whose employees are or are likely to be entrusted with the custody or control of money or property belonging to the authority, require such person to obtain in name of the authority or themselves take from any such company as aforesaid such security as they think sufficient for all such money or property being duly accounted for.
- (5) The local authority shall defray the premium in respect of any security taken under this section.
- (6) Every such deed of security shall be delivered to and remain in the custody of the clerk of the authority or other officer designated by the authority for the purpose and shall be produced by the clerk or other officer to the auditor at the audit of the accounts of the authority, and the auditor shall in each case report whether in his opinion security of a sufficient amount has been provided and whether the premiums payable have been duly paid.

## **99 Apportionment of loss due to defalcation of officer of local authority.**

If any officer of a local authority becomes insolvent and the sums for which he is accountable are not fully paid by or recovered from him or the company providing security for his intromissions, the deficiency shall be defrayed as part of such branch or branches of expenditure of the authority or out of funds managed by the authority (including in the case of a burgh having a common good the common good of the burgh) as the authority may determine or partly in one way and partly in the other, having regard to the circumstances of the case.

## **100 Notice of termination of appointments held during pleasure.**

For removal of doubts it is hereby declared that, notwithstanding any provision in this Act or any other enactment or any statutory order that a person holding any office shall hold the office during the pleasure of a local authority, there may be included in the terms on which he holds the office a provision that the appointment shall not be terminated by either party without giving to the other party such reasonable notice as may be agreed, and where at the commencement of this Act an officer of a local

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authority holds office upon terms which purport to include such a provision, that provision shall as from the commencement of this Act be deemed to be valid.

**101 Member of local authority not to be appointed officer of authority or of committee or joint committee or joint board.**

It shall not be lawful for a local authority or for a committee or sub-committee of the authority (including any committee or sub-committee to which section fifty-two of this Act applies) or for a joint committee or joint board containing persons appointed by the authority to appoint to any paid office in the gift or disposal of the authority or of the committee or sub-committee or of the joint committee or joint board, as the case may be, a person who is or has within six months prior to the date of appointment been a member of the authority or a person who is or has within six months prior to the date of appointment been a partner in business of the person who is or has within the said six months been a member of the authority.

**102 Disclosure by officers of interest in contracts.**

- (1) If it comes to the knowledge of an officer employed by a local authority under this Act or any other enactment or any statutory order that a contract in which he has any pecuniary interest whether direct or indirect (not being a contract to which he is himself a party) has been or is proposed to be entered into by the authority, he shall as soon as practicable give notice in writing to the authority of the fact that he is interested therein:

Provided that this subsection, shall not apply to an officer other than the clerk or treasurer of the authority, unless the contract relates to a matter in connection with which the officer is employed by the authority and the officer is normally consulted by the authority or by members thereof in connection with such contracts.

For the purposes of this subsection an officer shall be treated as having indirectly a pecuniary interest in a contract or proposed contract if he would have been so treated by virtue of subsection (2) or subsection (4) of section seventy-three of this Act had he been a member of the authority.

- (2) An officer of a local authority shall not under colour of his office or employment exact or accept for himself any fee or reward whatsoever other than his proper remuneration.
- (3) The provisions of subsections (5) and (6) of section seventy-three of this Act shall subject to any necessary modifications apply in the Case of an officer of a local authority as they apply in the case of a member of the authority, so however that the book mentioned in the said subsection (6) shall be open to the inspection only of any member or the clerk of the authority.
- (4) If any person fails to comply with subsection (1) or contravenes any of the provisions of subsection (2) of this section he shall be liable on summary conviction to a fine not exceeding fifty pounds.
- (5) References in this section to a local authority shall include references to a committee or sub-committee of the authority (including any committee or sub-committee to which section fifty-two of this Act applies) or to a joint committee or joint board.

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### **103 Protection for officer of local authority acting in execution of duty.**

- (1) An officer of a local authority shall not be personally liable in respect of any act done by him in the execution of any enactment or statutory order relating to a function of the authority and within the scope of his employment, if he acted reasonably and in the honest belief that his duty under such enactment or statutory order required or entitled him to do it:

Provided that nothing in this subsection shall be construed—

- (a) as relieving a local authority from any liability in respect of acts of their officers, or
  - (b) as exempting any officer of a local authority from being surcharged in accordance with the provisions of Part X of this Act.
- (2) Where an action has been brought against an officer of a local authority in respect of an act done by him in the execution or purported execution of any such enactment or statutory order and the circumstances are such that he is not legally entitled to require the authority to indemnify him, the authority may nevertheless indemnify him against the whole or a part of any damages or expenses which he may have been ordered to pay or may have incurred if they are satisfied that he honestly believed that the act complained of was within the scope of his employment and that his duty under such enactment or order required or entitled him to do it.

### **104 Savings for existing officers, and &c.**

- (1) Subject to the provisions of sections ninety-eight and one hundred of this Act, nothing in this Act shall affect the appointment, emoluments, or tenure of office of any officer of a local authority holding office at the commencement of this Act to which office he was duly appointed in accordance with the law in force at the time of appointment.
- (2) Nothing in this Part of this Act shall affect the terms of any agreement made between a local authority and the Minister of Transport under subsection (2) of section seventeen of the Ministry of Transport Act, 1919, with respect to the appointment, retention or dismissal of any engineer or surveyor of the authority responsible for the maintenance of roads.