
STATUTORY INSTRUMENTS

1991 No. 445

**LOCAL GOVERNMENT, ENGLAND AND WALES
LONDON GOVERNMENT**

**The Common Council and New Successor
Bodies (Chief Finance Officer) Regulations 1991**

<i>Made</i>	- - - -	<i>5th March 1991</i>
<i>Laid before Parliament</i>		<i>11th March 1991</i>
<i>Coming into force</i>	- -	<i>1st April 1991</i>

The Secretary of State, in exercise of the powers conferred upon him by section 6(6) of the Local Government and Housing Act 1989(1), and of all other powers enabling him in that behalf, hereby makes the following Regulations:

Citation, commencement and interpretation

1. These Regulations may be cited as the Common Council and New Successor Bodies (Chief Finance Officer) Regulations 1991 and shall come into force on 1st April 1991.

2. In these Regulations—

“the 1989 Act” means the Local Government and Housing Act 1989;

“authority”, unless the context otherwise requires, means an authority to which these Regulations apply in accordance with regulation 3;

“chief finance officer” means—

- (a) in relation to the Common Council, the person having responsibility for the administration of such of the Council’s financial affairs as relate to it in its capacity as a local authority, police authority or port health authority(2);
- (b) in relation to a pensions authority, the person having responsibility for the administration of its financial affairs(3);

(1) 1989 c. 42.

(2) See section 6(1)(b) of the Local Government and Housing Act 1989.

(3) See section 73 of the Local Government Act 1985 (c. 51) which is applied to the South Yorkshire Pensions Authority by the Local Government Reorganisation (Pensions etc.) (South Yorkshire) Order 1987 (S.I.1987/2110), Schedule 1, paragraph 7(h); and to the London Pensions Fund Authority by the London Government Reorganisation (Pensions etc.) Order 1989 (S.I. 1989/1815), Schedule 1, paragraph 9, which was inserted by article 2 of the London Government Reorganisation (Pensions etc.) (Amendment) Order 1990 (S.I. 1990/198).

“joint committee” means a committee on which two authorities are represented, and references to a committee (joint or otherwise) include references to a sub-committee; and

“pensions authority” means the South Yorkshire Pensions Authority and the London Pensions Fund Authority⁽⁴⁾.

Application of the Regulations

3. These Regulations, which make provision equivalent to sections 114 to 116 of the Local Government Finance Act 1988⁽⁵⁾, apply to the following authorities—

- (a) the Common Council in its capacity as a local authority, police authority or port health authority; and
- (b) pensions authorities.

Functions of responsible officer as regards reports

4.—(1) The chief finance officer of an authority shall have the duties mentioned in this regulation, without prejudice to any other functions.

(2) The chief finance officer shall make a report under this regulation if it appears to him that the authority, a committee or officer of the authority, or a joint committee—

- (a) has made or is about to make a decision which involves or would involve the authority incurring expenditure which is unlawful;
- (b) has taken or is about to take a course of action which, if pursued to its conclusion, would be unlawful and likely to cause a loss or deficiency on the part of the authority; or
- (c) is about to enter an item of account the entry of which is unlawful.

(3) The chief finance officer shall make a report under this regulation if it appears to him that the expenditure of the authority incurred (including expenditure it proposes to incur) in a financial year is likely to exceed the resources (including sums borrowed) available to it to meet that expenditure.

(4) It shall be the duty of the chief finance officer, in preparing a report in pursuance of paragraph (2), to consult so far as practicable—

- (a) with the person who is for the time being responsible for performing the duties of the authority’s monitoring officer under section 5 of the 1989 Act, and
- (b) if in the case of the Common Council another person is for the time being designated as the head of the authority’s paid service under section 4 of that Act, also with that officer.

(5) Where the chief finance officer has made a report under this regulation he shall send a copy of it to—

- (a) the person who at the time the report is made has the duty to audit the authority’s accounts; and
- (b) each person who at that time is a member of the authority.

(6) Subject to paragraph (7), the duties of a chief finance officer under paragraphs (2) and (3) shall be performed by him personally.

(7) If the chief finance officer is unable to act owing to absence or illness his duties under paragraphs (2) and (3) shall be performed—

- (a) by such member of his staff as is a member of one or more of the bodies mentioned in section 6(5) of the 1989 Act and is for the time being nominated by the chief finance officer for the purpose of this regulation; or

(4) See article 2 of S.I. 1987/2110 and article 2 of S.I. 1989/1815.

(5) 1988 c. 41. Section 114 was amended by the Local Government and Housing Act 1989, Schedule 5, paragraph 66.

(b) if no member of his staff is a member of one or more of those bodies, by such member of his staff as is for the time being nominated by the chief finance officer for the purpose of this regulation.

(8) An authority shall provide its chief finance officer with such staff, accommodation and other resources as are in his opinion sufficient to allow his duties under this regulation to be performed.

Authority's duties as regards reports

5.—(1) This regulation applies where copies of a report under regulation 4 have been sent under paragraph (5) of that regulation.

(2) The authority shall consider the report at a meeting where it shall decide whether it agrees or disagrees with the views contained in the report and what action (if any) it proposes to take in consequence of it.

(3) The meeting must be held not later than the end of the period of 21 days beginning with the day on which copies of the report are sent.

(4) Section 101 of the Local Government Act 1972⁽⁶⁾ (delegation) shall not apply to the duty under paragraph (2) where the authority is one to which that section would apply apart from this paragraph.

(5) If the report was made under paragraph (2) of regulation 4, during the prohibition period the course of conduct which led to the report being made shall not be pursued.

(6) If the report was made under paragraph (3) of that regulation, during the prohibition period the authority shall not enter into any new agreement which may involve the incurring of expenditure (at any time) by the authority.

(7) If paragraph (5) is not complied with, and the authority makes any payment in the prohibition period as a result of the course of conduct being pursued, it shall be taken not to have had power to make the payment (notwithstanding any obligation to make it under contract or otherwise).

(8) If paragraph (6) is not complied with, the authority shall be taken not to have had power to enter into the agreement (notwithstanding any option to do so under contract or otherwise).

(9) For the purposes of this regulation “the prohibition period” means the period—

(a) beginning with the day on which copies of the report are sent; and

(b) ending with the first business day to fall after the day (if any) on which the authority's consideration of the report under paragraph (2) is concluded.

(10) If paragraph (3) is not complied with, it is immaterial for the purposes of paragraph (9)(b).

(11) The nature of the decisions made at the meeting is immaterial for the purposes of paragraph (9)(b).

(12) In paragraph (9)(b) “business day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in England.

Information about meetings

6.—(1) Where it is proposed to hold a meeting under regulation 5 the authority's proper officer shall as soon as is reasonably practicable notify its auditor of the date, time and place of the proposed meeting.

(2) As soon as is reasonably practicable after a meeting is held under regulation 5 the authority's proper officer shall notify its auditor of any decision made at the meeting.

(6) 1972 c. 70; section 101 is applied to the South Yorkshire Pensions Authority by virtue of paragraph 3(i) of Schedule 1 to S.I. 1987/2110 and to the Common Council by section 101(13) of the 1972 Act.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(3) For the purposes of this regulation an authority's proper officer is the person to whom the authority has for the time being assigned responsibility to notify its auditor under this regulation.

(4) For the purposes of this regulation an authority's auditor is the person who for the time being has the duty to audit its accounts.

5th March 1991

Michael Heseltine
One of Her Majesty's Principal Secretaries of
State

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations apply to the Common Council in its capacity as a local authority, police authority or port health authority, to the South Yorkshire Pensions Authority and to the London Pensions Fund Authority.

The Regulations contain provisions equivalent to, and differing only in minor respects from, sections 114 to 116 of the Local Government Finance Act 1988. They impose a duty on the responsible officer of the authorities to which they apply to make a report in specified cases of actual or anticipated financial misconduct; a duty on the authority to consider the report and in the event of non-compliance, prohibitions and other restrictions relating to matters that are the subject of a report.