

*These notes relate to the Ethical Standards in Public Life etc. (Scotland)
Act 2000 (asp 7) which received Royal Assent on 24 July 2000*

ETHICAL STANDARDS IN PUBLIC LIFE ETC. (SCOTLAND) ACT 2000

EXPLANATORY NOTES

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The Act

Part 5

Functions of Controller of Audit and Accounts Commission for Scotland

Section 33 Procedure for special reports and modification of surcharge provisions

69. This Part provides for repeal of the surcharge provisions in Part VII of the Local Government (Scotland) Act 1973. It amends that Act to provide the Accounts Commission for Scotland and the Controller of Audit with a new procedure for special reports where an item of account is contrary to law, or where failure by any person to bring any sum into account, or where negligence or misconduct by a councillor or an officer of a council has led to a loss or deficiency in public funds. The Accounts Commission can consider, and if necessary impose, a similar range of sanctions as are available to the Standards Commission when considering breach of codes of conduct.
70. Subsection (1) amends section 102 of the 1973 Act to give the Controller of Audit discretion whether to submit a special report to the Accounts Commission.
71. The report may not be submitted to the Accounts Commission until the council, and any person named in the report as being culpable in the matter, has been given a copy of the proposed report and an opportunity to make representations to the Controller on the proposed report and on any of the matters dealt with in it.
72. Subsections (2) and (4) repeal the provisions, contained in sections 103 and 104 of the 1973 Act, relating to the imposition by the Accounts Commission surcharges on councillors and officers of local authorities.
73. Subsection (3) provides a new procedure for the handling of special reports by inserting several new sections after section 103 of the 1973 Act. These new sections are largely modelled on sections 15 to 22 of this Act.
74. Section 103A provides for the publication of special reports. The Accounts Commission may publish a special report submitted to it by the Controller of Audit, if it thinks fit, and in whatever form it thinks fit.
75. Section 103B provides for action by the Accounts Commission on receipt of special reports. On receiving a report from the Controller of Audit, the Accounts Commission may direct the Controller of Audit to carry out further investigations may hold a hearing or may state a case on a question of law for the opinion of the Court of Session. It has discretion to do none of these but must hold a hearing if asked to do so by the local council concerned or by any person named or referred to in the special report as in some

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way responsible for the report being required; and it must state a case if it is directed to do so by the Court of Session.

76. Section 103C makes provision as to the procedure to be followed at hearings on special reports (referred to in these notes as “special hearings”) held by the Accounts Commission. Subject to certain conditions, the procedure at a special hearing shall be determined by the Accounts Commission. Those conditions are:
- The Accounts Commission may, at a special hearing, consider allegations of blame against, or allegations of failure, negligence or misconduct by, more than one officer or member of a local authority.
 - A special hearing shall be conducted by no fewer than three members of the Accounts Commission, selected by the Chairman of the Accounts Commission. The Chairman may be one of the three members, and for the purposes of such a hearing the quorum of the Accounts Commission shall be three.
 - An officer or member of a local authority whose responsibility for an item of account being contrary to law, or whose alleged failure, negligence or misconduct is being considered by a special hearing, is entitled to be heard either in person or to be represented by any other person (including counsel or a solicitor).
 - The members of the Accounts Commission conducting a special hearing may administer oaths and may require any person to attend, to give evidence and to produce documents. However no person can be compelled to give any evidence or produce any documents if they could not be compelled to do so in civil proceedings in the Court of Session.
 - Anyone who, without reasonable excuse, fails to obey a requirement to attend a special hearing, give evidence or produce documents is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
 - The Accounts Commission may pay persons appearing at a special hearing or attending it for the purposes of giving evidence or producing documents, such expenses or allowances as it thinks fit.
 - Special hearings are to be held in public, unless the members of the Accounts Commission conducting the hearing consider that it is in the public interest for the hearing, or any part of it, to be held in private.
77. Section 103D requires the members of the Accounts Commission conducting a special hearing to state their findings in writing and to give a copy to: any councillor or officer of a council who were the subject of allegations considered at the hearing; the appropriate council; any other person the Accounts Commission considers should receive a copy; and any other person seeking a copy of the findings upon payment of a reasonable charge.
78. Section 103E describes the action to be taken by a council on receipt of findings under section 103D. The council must consider the findings, including any recommendations, at a meeting of the full council within three months of receipt unless the Accounts Commission has specified a longer period in writing. The meeting, and its subject matter, must be advertised at least seven days in advance in a newspaper with local circulation. The advertisement must include a summary of the Accounts Commission’s findings and of any recommendations made.
79. After the meeting the council must notify the Accounts Commission of any decisions made in response to any recommendations, and publish a summary of those decisions in a newspaper with local circulation. The published summary must have been approved by the Accounts Commission. It does not need to include any decision made in private under section 50A(2) of the Local Government (Scotland) Act 1973 (which covers confidential matters) or in pursuance of a resolution under section 50A(4) of the Act

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(exempt information) but must indicate where documents are open for public inspection in accordance with sections 50C and 50D of that Act.

80. Section 103F deals with the sanctions available to the Accounts Commission if it finds that an item of account is contrary to law; that failure, negligence or misconduct by a councillor or officer of a council have led to a loss or deficiency in public funds; or that the accounts are mis-stated and the Accounts Commission is not satisfied that remedial steps have been or are being taken.
81. The Accounts Commission has discretion to select one of the following options:
 - impose no sanction;
 - a councillor or an officer of a council may be censured only, but otherwise no action taken;
 - a councillor may be suspended from attending meetings of one or more but not all of the following :- meetings of the council and of any committee or sub-committee of that council, or any other body on which that member is a representative or nominee of the council. The maximum period of suspension is one year. Where the period of suspension goes beyond the date of the next local government election, then the period of suspension will cease on that date; or
 - a councillor may be suspended from attending meetings of the council and of any committee or sub-committee of that council, or any other body on which that member is a representative or nominee of the council. The maximum period of suspension is one year. Where the period of suspension goes beyond the date of the next local government election, then the period of suspension will cease on that date; or
 - a councillor may be disqualified from being nominated as or being elected as a councillor. The maximum period of disqualification is five years.
82. Disqualification of a councillor would have the effect of vacating that councillor's office and terminating his or her membership of any committee, sub-committee, joint committee, joint board or any other body on which he or she sits either as a councillor, or as a representative or nominee of that council.
83. The Accounts Commission may recommend to Scottish Ministers that the council be directed to rectify its accounts. If it does so, it must forthwith send a copy of those recommendations to the council and to any person it thinks fit. Scottish Ministers may make an order giving effect to such recommendations, with or without modifications or may decline such recommendations. If Scottish Ministers make any such order, the council concerned must give effect to it.
84. The Accounts Commission may also include in its findings such recommendations as it thinks fit.
85. New section 103G makes similar provision for interim reports and interim suspension as in section 21.
86. Section 103H provides that any statement made by the Accounts Commission or its agents, or the staff of Audit Scotland working on the Accounts Commission's behalf, or the Controller of Audit, in pursuance of the new special report procedure shall be absolutely privileged.
87. Section 103J provides for an appeal to the Sheriff Principal against a finding of, the imposition of a sanction by, or the imposition of interim suspension by, the Accounts Commission following a special hearing.
88. A number of grounds of appeal are available. In the case of an appeal against findings, these are that the finding was based on an error of law; that there was procedural

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impropriety in the conduct of the special hearing; that the Accounts Commission acted unreasonably in the exercise of its discretion; and that the Accounts Commission's finding was not supported by the facts. In the case of an appeal against sanction the grounds of appeal are that the sanction imposed was excessive, or that the Accounts Commission had acted unreasonably in the exercise of its discretion. In the case of appeal against an interim suspension, the ground of appeal is that the Accounts Commission has acted unreasonably in the exercise of its discretion.

89. An appeal must be lodged within 21 days of the finding being sent to, or the sanction or suspension being imposed upon, the officer or member. The finding or sanction continues to have force notwithstanding the appeal.
90. In disposing of the appeal, the Sheriff Principal may confirm or quash the finding, and may remit the matter back to the Accounts Commission to reconsider. In the case of a sanction, confirm or quash the sanction and he may substitute a lesser sanction. He may award expenses.
91. An appeal from the decision of the Sheriff Principal is available to the Court of Session.
92. The Accounts Commission may be a party to an appeal to the Sheriff Principal or to an appeal arising from the decision of the Sheriff Principal.
93. Subsection (4) repeals section 104 of the Local Government (Scotland) Act 1973 which makes provision as to the role of the Scottish Ministers in surcharge procedure. The repeal of section 104 completes the removal of the surcharge procedures which are now replaced by section 103A to J.