



Ethical Standards in Public Life etc. (Scotland) Act 2000

2000 asp 7

PART 5

FUNCTIONS OF CONTROLLER OF AUDIT AND ACCOUNTS COMMISSION FOR SCOTLAND

33 Procedure for special reports and modification of surcharge provisions

(1) In section 102 (reports to Accounts Commission for Scotland by Controller of Audit) of the Local Government (Scotland) Act 1973 (c.65)—

- (a) in subsection (3), for “shall” there is substituted “ may ”;
- (b) after subsection (3) there is inserted—

“(3A) No such special report shall, however, be so made unless—

- (a) the authority; and
- (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; or
 - (ii) whose failure, negligence or misconduct is a subject of the report,

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.”.

(2) In section 103 (action by Accounts Commission for Scotland on reports by Controller of Audit) of that Act—

- (a) in subsection (1)—
 - (i) the words “Subject to subsection (2) below,” are repealed; and
 - (ii) after the words “any report” there is inserted “ , except a special report under section 102(3) of this Act, ”;
- (b) subsections (2) to (5) are repealed.

(3) After section 103 of that Act there are inserted the following sections—

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“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.

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.

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

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

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.

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

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of receiving them or within such longer period as the Commission may specify in writing.

- (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.

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;

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- (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—
 - (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.

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- (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.

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.
- (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.

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- (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).

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).

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—

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- (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;
 - (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.”.
- (4) Section 104 (action by Scottish Ministers on recommendation by Commission) of that Act is repealed.

Commencement Information

II S. 33 wholly in force at 1.1.2002; s. 33 not in force at Royal Assent see s. 37; s. 33 in force by S.S.I. 2001/474, arts. 2, 3 (subject to art. 4)

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