



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,

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- (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,

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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.

Maladministration etc.

92 Payments in cases of maladministration etc

- (1) Where a relevant authority consider—
- (a) that action taken by or on behalf of the authority in the exercise of their functions amounts to, or may amount to, maladministration, and
 - (b) that a person has been, or may have been, adversely affected by that action, the authority may, if they think appropriate, make a payment to, or provide some other benefit for, that person.
- (2) Any function which is conferred on the Greater London Authority under this section is to be exercisable by the Mayor of London and the London Assembly acting jointly on behalf of the Authority.
- (3) In this section—
- “action” includes failure to act,
 - “relevant authority” has the same meaning as in Part III of this Act.

Welfare services

93 Grants for welfare services

- (1) The Secretary of State may, with the consent of the Treasury, pay grants to local authorities in England towards expenditure incurred by them in providing, or contributing to the provision of, such welfare services as may be determined by the Secretary of State.
- (2) The National Assembly for Wales may pay grants to local authorities in Wales towards expenditure incurred by them in providing, or contributing to the provision of, such welfare services as may be determined by the Assembly.
- (3) The amount of any grants under this section and the manner of their payment are to be such as may be determined by the Secretary of State or the Assembly (as the case may be).
- (4) Grants under this section may be paid—
- (a) to all local authorities,
 - (b) to particular local authorities, or
 - (c) to particular descriptions of local authority (including descriptions framed by reference to authorities in particular areas).

- (5) Grants under this section may be paid on such terms and conditions as the Secretary of State or, as the case may be, the Assembly may determine; and nothing in subsection (6) affects the generality of this subsection.
- (6) Those terms and conditions may include provision as to the circumstances in which the whole or any part of a grant under this section must be repaid to the Secretary of State or the Assembly.
- (7) A local authority must supply the Secretary of State or, as the case may be, the Assembly with such information as he or it may require for the purposes of this section.
- (8) A local authority must have regard to any guidance for the time being issued by the Secretary of State or, as the case may be, the Assembly with respect to the administration and application of grants under this section which are paid to them.
- (9) A local authority must comply with any directions for the time being given by the Secretary of State or, as the case may be, the Assembly with respect to the administration and application of grants under this section which are paid to them.
- (10) Any determination, guidance or directions under this section may make different provision in relation to different local authorities or descriptions of local authority (including descriptions framed by reference to authorities in particular areas).
- (11) Before making any determination, issuing any guidance or giving any directions under this section relating to all local authorities in England or Wales or any description of such authorities, the Secretary of State or (as the case may be) the National Assembly for Wales must consult—
 - (a) such local authorities or representatives of local authorities as appear to him or it to be appropriate,
 - (b) such recipients, or representatives of recipients, of welfare services as appear to him or it to be appropriate, and
 - (c) such providers, or representatives of providers, of welfare services as appear to him or it to be appropriate.
- (12) In this section—
 - “local authority” means—
 - (a) in relation to England, a county council, a district council, a London borough council, the Common Council of the City of London or the Council of the Isles of Scilly,
 - (b) in relation to Wales, a county council or a county borough council,
 - “welfare services” includes services which provide support, assistance, advice or counselling to individuals with particular needs.

94 Disclosure of information

- (1) Subsection (3) applies to information which is held by, or by a person providing services to, the Secretary of State and which relates to income support or income-based jobseeker’s allowance.
- (2) Subsection (3) also applies to information relating to housing benefit which is held by—
 - (a) an authority administering housing benefit, or

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- (b) a person authorised to exercise any function of such an authority relating to housing benefit.
- (3) Information to which this subsection applies may be supplied to—
 - (a) a local authority to which any grant is or will be paid under section 93, or
 - (b) a person authorised to exercise any function of that authority relating to that grant,
 for purposes connected with the application of that grant towards expenditure falling within section 93(1) or (2) (as the case may be).
- (4) Information which is supplied to an authority or other person under subsection (3) may be supplied by the authority or person to a person who provides qualifying welfare services for purposes connected with the provision of those services.
- (5) For the purposes of this section a person is to be regarded as providing qualifying welfare services if—
 - (a) he provides welfare services,
 - (b) a local authority contribute or will contribute to the expenditure incurred by him in providing those services, and
 - (c) that contribution is or will be derived (in whole or in part) from any grant which is or will be paid to the authority under section 93.
- (6) In this section “local authority” and “welfare services” have the same meaning as in section 93.
- (7) The Secretary of State may by order make such modifications of this section as he considers necessary or expedient in consequence of any provision corresponding to section 93 which is enacted by the Scottish Parliament.

95 Unauthorised disclosure of information

- (1) The persons to whom this section applies are—
 - (a) any person (“the recipient”) to whom information is supplied by virtue of section 94,
 - (b) any person who is or has been a director, member of the committee of management, manager, secretary or other similar officer of the recipient, and
 - (c) any person who is or has been employed by the recipient.
- (2) A person to whom this section applies is guilty of an offence if he discloses without lawful authority any information which is supplied by virtue of section 94 and which relates to a particular person.
- (3) It is not an offence under this section—
 - (a) to disclose information in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it, or
 - (b) to disclose information which has previously been disclosed to the public with lawful authority.
- (4) It is a defence for a person charged with an offence under this section to prove that at the time of the alleged offence—
 - (a) he believed that he was making the disclosure in question with lawful authority and had no reasonable cause to believe otherwise, or

- (b) he believed that the information in question had previously been disclosed to the public with lawful authority and had no reasonable cause to believe otherwise.
- (5) A person guilty of an offence under this section is to be liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both, or
 - (b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both.
- (6) For the purposes of this section a disclosure is to be regarded as made with lawful authority if, and only if, it is made—
- (a) in accordance with section 94(4) or any other enactment,
 - (b) in accordance with an order of a court,
 - (c) for the purpose of instituting, or otherwise for the purposes of, any proceedings before a court or tribunal, or
 - (d) with the consent of the appropriate person (as defined in section 123(10) of the Social Security Administration Act 1992).
- (7) The Secretary of State may by order make such modifications of this section as he considers necessary or expedient in consequence of any provision corresponding to section 93 which is enacted by the Scottish Parliament.

96 Housing benefit

- (1) Section 130 of the Social Security Contributions and Benefits Act 1992 (housing benefit) is amended as follows.
- (2) At the end of subsection (2) there is inserted—
- “but this subsection is subject to subsection (2A).
- (2A) Except to the extent that regulations otherwise provide, payments in respect of services which provide support, assistance, advice or counselling to individuals with particular needs are not “payments in respect of a dwelling” for the purposes of subsection (1).”
- (3) After subsection (4) there is inserted—
- “(4A) Regulations under subsection (2A) above may make provision with respect to particular areas, particular authorities or particular descriptions of authority.”

Access to information

97 Background papers

- (1) In section 100D of the Local Government Act 1972 (inspection of background papers) for subsection (1) there is substituted—
- “(1) Subject, in the case of section 100C(1), to subsection (2) below, if and so long as copies of the whole or part of a report for a meeting of a principal council are required by section 100B(1) or 100C(1) above to be open to inspection by members of the public—

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- (a) those copies shall each include a copy of a list, compiled by the proper officer, of the background papers for the report or the part of the report, and
- (b) at least one copy of each of the documents included in that list shall also be open to inspection at the offices of the council.”

(2) In subsection (2) the words “of the list, or” are omitted.

98 Meetings and documents: notice etc

(1) In section 100K of the Local Government Act 1972 (interpretation and application of Part VA), after subsection (2) there is inserted—

“(3) The Secretary of State may by order amend sections 100A(6)(a) and 100B(3) and (4)(a) above so as to substitute for each reference to three clear days such greater number of days as may be specified in the order.

(4) Any statutory instrument containing an order under subsection (3) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

(2) In Schedule 12 to that Act (meetings and proceedings of local authorities), after paragraph 4 there is inserted—

“4A (1) The Secretary of State may by order amend paragraph 4(2) above so as to substitute for the reference to three clear days such greater number of days as may be specified in the order.

(2) Any statutory instrument containing an order under sub-paragraph (1) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

Allowances and pensions

99 Allowances and pensions for certain local authority members

(1) The provision which may be made by regulations under section 7 of the Superannuation Act 1972 (superannuation of persons employed in local government service etc) includes provision for or in connection with the provision of pensions, allowances or gratuities to or in respect of such members of a local authority as may be prescribed by the regulations.

(2) In subsection (1) “local authority” has the same meaning as in Part II of this Act.

(3) Section 18 of the Local Government and Housing Act 1989 (schemes for basic, attendance and special responsibility allowances for local authority members) is amended as follows.

(4) At the beginning of subsection (1) there is inserted “Subject to subsection (1A),” and after that subsection there is inserted—

“(1A) In relation to a district council, county council, county borough council or London borough council, subsection (1) above shall have effect with the omission of paragraph (b).”

(5) After subsection (2) there is inserted—

“(2A) Regulations under this section may authorise or require a scheme made by a district council, county council, county borough council or London borough council to include provision for the payment to members of the council of allowances in respect of such expenses of arranging for the care of children or dependants as are necessarily incurred in the carrying out of their duties as members.”

(6) In subsection (3), for “and (2)” there is substituted “to (2A)”.

(7) After subsection (3) there is inserted—

“(3A) Regulations under this section may make provision for or in connection with—

- (a) enabling district councils, county councils, county borough councils or London borough councils to determine which members of the council are to be entitled to pensions, allowances or gratuities,
- (b) treating the basic allowance or the special responsibility allowance as amounts in respect of which such pensions, allowances or gratuities are payable.

(3B) Regulations under this section may make provision for or in connection with requiring a district council, county council, county borough council or London borough council to establish and maintain a panel which is to have such functions as may be specified in the regulations in relation to allowances, or pensions, allowances or gratuities, payable to members of the council.

(3C) Regulations under this section may make provision for or in connection with enabling a panel established by a body specified in the regulations to exercise such functions as may be specified in the regulations in relation to allowances, or pensions, allowances or gratuities, payable to members of such district councils, county councils or London borough councils in England as may be specified in the regulations.

(3D) Regulations under this section may make provision for or in connection with the establishment by the National Assembly for Wales on a permanent or temporary basis of a panel which is to have such functions as may be specified in the regulations in relation to allowances, or pensions, allowances or gratuities, payable to members of county councils and county borough councils in Wales.

(3E) Regulations under subsection (3B) above may include provision—

- (a) with respect to the number of persons who may or must be appointed to the panel of a council,
- (b) with respect to the persons who may or must be appointed to the panel of a council,
- (c) for or in connection with the appointment by councils of joint panels.

(3F) Regulations under subsection (3C) may include provision—

- (a) with respect to the number of persons who may or must be appointed to a panel mentioned in that subsection,
- (b) with respect to the persons who may or must be appointed to such a panel.

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- (3G) Regulations under subsection (3B), (3C) or (3D) may include provision—
- (a) for or in connection with enabling a panel mentioned in that subsection to make recommendations to a council on the level of allowances payable to members of the council,
 - (b) for or in connection with enabling such a panel to make recommendations to a council as to which members of the council are to be entitled to pensions, allowances or gratuities,
 - (c) which permits different recommendations to be made in relation to different councils or descriptions of council.”
- (8) In subsection (4), for the word “and” at the end of paragraph (b) there is substituted—
- “(ba) make provision with respect to the amendment, revocation or replacement of a scheme made by a relevant authority under the regulations; and”.
- (9) After subsection (5) there is inserted—
- “(5A) In making or operating any scheme authorised or required by regulations under this section, a district council, county council, county borough council or London borough council shall have regard to any guidance for the time being issued by the Secretary of State.”

100 Power to make provision about allowances

- (1) The Secretary of State may by regulations make provision with respect to—
- (a) allowances payable to members of a parish council,
 - (b) travelling and subsistence allowances payable to members of such relevant authorities as may be prescribed,
 - (c) allowances payable to members of such relevant authorities as may be prescribed for attending conferences or meetings,
 - (d) the reimbursement of expenses incurred by members of such relevant authorities as may be prescribed.
- (2) For the purposes of this section a member of a committee or sub-committee of a relevant authority is to be treated as a member of the authority.
- (3) The provision which may be made under subsection (1)(b) includes provision with respect to allowances in respect of travel by bicycle or by any other non-motorised form of transport.
- (4) The provision which may be made under this section includes provision which amends or repeals any provisions of sections 173 to 178 of the Local Government Act 1972.
- (5) Before making any regulations under this section, the Secretary of State must consult such representatives of local government and such other persons (if any) as he considers appropriate.
- (6) In this section—
- “prescribed” means prescribed by regulations made by the Secretary of State,
- “relevant authority” means—
- (a) a body specified in section 21(1) of the Local Government and Housing Act 1989,

- (b) a body on which a body falling within paragraph (a) is represented,
- (c) a parish council.

- (7) In its application to Wales this section has effect as if—
- (a) for any reference to the Secretary of State there were substituted a reference to the National Assembly for Wales,
 - (b) for any reference to a parish council there were substituted a reference to a community council.

Indemnification of members and officers of relevant authorities

101 Indemnification of members and officers of relevant authorities

- (1) The Secretary of State may by order make provision for or in connection with conferring power on relevant authorities in England and police authorities in Wales to provide indemnities to some or all of their members and officers.
- (2) The National Assembly for Wales may by order make provision for or in connection with conferring power on relevant authorities in Wales (other than police authorities) to provide indemnities to some or all of their members and officers.
- (3) An order under this section may apply—
 - (a) to all relevant authorities, or
 - (b) to any particular description of relevant authority.
- (4) Before making an order under this section, the Secretary of State or (as the case may be) the National Assembly for Wales must consult—
 - (a) such representatives of relevant authorities,
 - (b) such representatives of employees of relevant authorities, and
 - (c) such other persons,as he or it considers appropriate.
- (5) In this section—
 - “member”, in relation to a relevant authority, includes—
 - (i) a member of any committee or sub-committee of the authority, or
 - (ii) a person who is a member of, and represents the authority on, any joint committee or sub-committee,
 - “police authority” and “relevant authority” have the same meaning as in Part III of this Act.

Social services functions

102 Social services functions

- (1) Sections 2 to 5 of the Local Authority Social Services Act 1970 (establishment and operation of social services committees) do not apply to a local authority (within the meaning of that Act) which are operating executive arrangements (within the meaning of Part II of this Act).
- (2) Section 6(5) of that Act (social services director not to discharge non-social services functions without approval of Secretary of State) ceases to have effect.

(3) After section 1 of that Act there is inserted the following section—

“1A Meaning of “social services functions”

For the purposes of this Act the social services functions of a local authority are—

- (a) their functions under the enactments specified in the first column of Schedule 1 to this Act (being the functions which are described in general terms in the second column of that Schedule), and
- (b) such other of their functions as the Secretary of State may designate by an order made under this section.”

Recoupment by local authorities of cost of providing day care

103 Recoupment by local authorities of cost of providing day care

(1) In subsection (3) of section 29 of the Children Act 1989 (recoupment of cost of providing services etc.), after “subsection (1)” there is inserted “for a service provided under section 17 or section 18(1) or (5)”.

(2) After that subsection there is inserted—

“(3A) No person shall be liable to pay any charge under subsection (1) for a service provided under section 18(2) or (6) at any time when he is in receipt of income support under Part VII of the Social Security Contributions and Benefits Act 1992 or of an income-based jobseeker’s allowance.”

Prohibition on promoting homosexuality: bullying

104 Prohibition on promoting homosexuality: bullying

In section 2A of the Local Government Act 1986 (prohibition on promoting homosexuality by teaching or by publishing material), at the end of subsection (2) there is inserted “; or

- (b) prevent the headteacher or governing body of a maintained school, or a teacher employed by a maintained school, from taking steps to prevent any form of bullying”.