



Audit Commission Act 1998

1998 CHAPTER 18

PART II

ACCOUNTS AND AUDIT OF PUBLIC BODIES

Audit of accounts

2 Required audit of accounts

- (1) The accounts to which this section applies—
 - (a) shall be made up each year to 31st March or such other date as the Secretary of State may generally or in any special case direct, and
 - (b) shall be audited in accordance with this Act by an auditor or auditors appointed by the Commission.
- (2) This section applies to the accounts mentioned in Schedule 2.

3 Appointment of auditors

- (1) An auditor appointed by the Commission to audit the accounts of a body whose accounts are required to be audited in accordance with this Act (“a body subject to audit”) may be—
 - (a) an officer of the Commission,
 - (b) an individual who is not an officer of the Commission, or
 - (c) a firm of individuals who are not officers of the Commission.
- (2) Where two or more auditors are appointed in relation to the accounts of a body, some but not others may be officers of the Commission and they may be appointed—
 - (a) to act jointly;
 - (b) to act separately in relation to different parts of the accounts; or
 - (c) to discharge different functions in relation to the audit.

Status: This is the original version (as it was originally enacted).

- (3) Before appointing an auditor or auditors to audit the accounts of a body other than a health service body the Commission shall consult that body.
- (4) For the purpose of assisting the Commission in deciding on the appointment of an auditor or auditors in relation to the accounts of a body other than a health service body, the Commission may require the body to make available for inspection by or on behalf of the Commission such documents relating to any accounts of the body as the Commission may reasonably require for that purpose.
- (5) A person shall not be appointed by the Commission as an auditor unless—
 - (a) he is a member of one or more of the bodies mentioned in subsection (7);
 - (b) he has such other qualifications as may be approved for the purposes of this section by the Secretary of State; or
 - (c) he was approved before 1st April 1996 by the Secretary of State under section 13(5) of the Local Government Finance Act 1982, and the approval has not been withdrawn.
- (6) A firm shall not be appointed by the Commission as an auditor unless each of its members is a member of one or more of the bodies mentioned in subsection (7).
- (7) The bodies referred to in subsections (5) and (6) are—
 - (a) the Institute of Chartered Accountants in England and Wales;
 - (b) the Institute of Chartered Accountants of Scotland;
 - (c) the Association of Certified Accountants;
 - (d) the Chartered Institute of Public Finance and Accountancy;
 - (e) the Institute of Chartered Accountants in Ireland; and
 - (f) any other body of accountants established in the United Kingdom and for the time being approved by the Secretary of State for the purposes of this section.
- (8) The appointment by the Commission of an auditor who is not an officer of the Commission shall be on such terms and for such period as the Commission may determine.
- (9) Arrangements may be approved by the Commission, either generally or in a particular case, for a person or persons to assist an auditor appointed by the Commission (whether the auditor is an officer of the Commission or not) by carrying out such of the auditor's functions under this Act as may be specified in the arrangements.
- (10) Subsection (9) does not apply to functions under section 19.
- (11) References in the following provisions of this Act to an auditor include, in relation to any function of an auditor, a reference to any person carrying out that function under arrangements approved under subsection (9).

4 Code of audit practice

- (1) The Commission shall prepare, and keep under review, a code of audit practice prescribing the way in which auditors are to carry out their functions under this Act.
- (2) A different code may be prepared with respect to the audit of the accounts of health service bodies as compared with the code applicable to the accounts of other bodies.

Status: This is the original version (as it was originally enacted).

- (3) A code prepared under this section shall embody what appears to the Commission to be the best professional practice with respect to the standards, procedures and techniques to be adopted by auditors.
- (4) A code does not come into force until approved by a resolution of each House of Parliament, and its continuation in force is subject to its being so approved at intervals of not more than five years.
- (5) Subsection (4) does not preclude alterations to a code being made by the Commission in the intervals between its being approved in accordance with that subsection.
- (6) The Commission shall send copies of any code prepared under this section, and of any alterations made to such a code, to the Secretary of State who shall lay them before Parliament; and the Commission shall from time to time publish any such code as for the time being in force.
- (7) Before preparing or altering a code applicable to any accounts, the Commission shall consult—
 - (a) if the accounts are or include those of health service bodies, such organisations connected with the health service as appear to the Commission to be concerned;
 - (b) if the accounts are or include those of other bodies, such associations of local authorities as appear to the Commission to be concerned; and
 - (c) in any case, such bodies of accountants as appear to the Commission to be appropriate.

5 General duties of auditors

- (1) In auditing accounts required to be audited in accordance with this Act, an auditor shall by examination of the accounts and otherwise satisfy himself—
 - (a) if they are accounts of a health service body, that they are prepared in accordance with directions under subsection (2), (2B) (NHS trusts) or (2B) (fund-holding practices) of section 98 of the National Health Service Act 1977;
 - (b) in any other case, that they are prepared in accordance with regulations under section 27;
 - (c) that they comply with the requirements of all other statutory provisions applicable to the accounts;
 - (d) that proper practices have been observed in the compilation of the accounts;
 - (e) that the body whose accounts are being audited has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources; and
 - (f) that that body, if required to publish information in pursuance of a direction under section 44 (performance information), has made such arrangements for collecting and recording the information and for publishing it as are required for the performance of its duties under that section.
- (2) The auditor shall comply with the code of audit practice applicable to the accounts being audited as that code is for the time being in force.

6 Auditors' right to documents and information

- (1) An auditor has a right of access at all reasonable times to every document relating to a body subject to audit which appears to him necessary for the purposes of his functions under this Act.
- (2) An auditor may—
 - (a) require a person holding or accountable for any such document to give him such information and explanation as he thinks necessary for the purposes of his functions under this Act; and
 - (b) if he thinks it necessary, require the person to attend before him in person to give the information or explanation or to produce the document.
- (3) In the case of a recognised fund-holding practice, subsections (1) and (2) apply to documents relating to any of the accounts and records of the members of the practice whether or not relating to the allotted sum.
- (4) Without prejudice to subsection (2), the auditor may—
 - (a) require any officer or member of a body subject to audit to give him such information or explanation as he thinks necessary for the purposes of his functions under this Act; and
 - (b) if he thinks it necessary, require the officer or member to attend before him in person to give the information or explanation.
- (5) Without prejudice to subsections (1) to (4), every body subject to audit shall provide the auditor with every facility and all information which he may reasonably require for the purposes of his functions under this Act.
- (6) A person who without reasonable excuse fails to comply with any requirement of an auditor under subsection (1), (2) or (4) is guilty of an offence and liable on summary conviction—
 - (a) to a fine not exceeding level 3 on the standard scale, and
 - (b) to an additional fine not exceeding £20 for each day on which the offence continues after conviction for that offence.
- (7) Any expenses incurred by an auditor in connection with proceedings for an offence under subsection (6) alleged to have been committed in relation to the audit of the accounts of any body, so far as not recovered from any other source, are recoverable from that body.

7 Fees for audit

- (1) The Commission shall prescribe a scale or scales of fees in respect of the audit of accounts which are required to be audited in accordance with this Act.
- (2) Before prescribing any scale of fees under subsection (1) the Commission shall consult—
 - (a) if the scale relates to the audit of accounts of a health service body, such organisations connected with the health service as appear to the Commission to be concerned;
 - (b) if the scale relates to the audit of accounts of any other body, such associations of local authorities as appear to the Commission to be concerned; and
 - (c) in any case, such bodies of accountants as appear to the Commission to be appropriate.

Status: This is the original version (as it was originally enacted).

- (3) A body subject to audit shall, subject to subsection (4), pay to the Commission the fee applicable to the audit in accordance with the appropriate scale.
- (4) If it appears to the Commission that the work involved in a particular audit was substantially more or less than that envisaged by the appropriate scale, the Commission may charge a fee which is larger or smaller than that referred to in subsection (3).
- (5) For the purpose of determining the fee payable for an audit, a body whose accounts are being audited or (if it is a parish meeting) its chairman shall—
 - (a) complete a statement containing such information as the Commission may require and submit it to the auditor, and
 - (b) provide the Commission with such further information as it may at any time require.
- (6) The auditor shall send the statement mentioned in subsection (5)(a) to the Commission on the conclusion of the audit with a certificate that the statement is correct to the best of his knowledge and belief.
- (7) The fee payable for an audit shall be the same whether the auditor who carries it out is an officer of the Commission or not.
- (8) If the Secretary of State considers it necessary or desirable to do so, he may by regulations prescribe a scale or scales of fees to have effect, for such period as is specified in the regulations, in place of any scale or scales prescribed by the Commission; and, if he does so, references in subsections (3) and (4) to the appropriate scale are to be read as respects that period as references to the appropriate scale prescribed by the Secretary of State.
- (9) Before making any regulations under subsection (8) the Secretary of State shall consult—
 - (a) the Commission,
 - (b) such associations of local authorities as appear to him to be concerned, and
 - (c) such bodies of accountants as appear to him to be appropriate.

Auditors' reports and recommendations

8 Immediate and other reports in public interest

In auditing accounts required to be audited in accordance with this Act, the auditor shall consider—

- (a) whether, in the public interest, he should make a report on any matter coming to his notice in the course of the audit, in order for it to be considered by the body concerned or brought to the attention of the public, and
- (b) whether the public interest requires any such matter to be made the subject of an immediate report rather than of a report to be made at the conclusion of the audit.

9 General report

- (1) When an auditor has concluded his audit of the accounts of any body under this Act he shall, subject to subsection (2), enter on the relevant statement of accounts prepared

Status: This is the original version (as it was originally enacted).

pursuant to regulations under section 27 (or, where no such statement is required to be prepared, on the accounts)—

- (a) a certificate that he has completed the audit in accordance with this Act, and
- (b) his opinion on the statement (or, as the case may be, on the accounts).

- (2) Where an auditor makes a report to the body concerned under section 8 at the conclusion of the audit, he may include the certificate and opinion referred to in subsection (1) in that report instead of making an entry on the statement or accounts.

10 Transmission and consideration of section 8 reports

- (1) Any report under section 8 shall be sent by the auditor to the body concerned or (if it is a parish meeting) to its chairman—
 - (a) forthwith if it is an immediate report;
 - (b) otherwise not later than 14 days after conclusion of the audit.
- (2) A copy of the report shall be sent by the auditor to the Commission and (in the case of a health service body) to the Secretary of State—
 - (a) forthwith if it is an immediate report;
 - (b) otherwise not later than 14 days after conclusion of the audit.
- (3) The body concerned shall take the report into consideration—
 - (a) in accordance with sections 11 and 12, or
 - (b) if section 11 does not apply to the body, as soon as practicable after receiving it.
- (4) The agenda supplied to the members for the meeting of the body at which the report is considered shall be accompanied by the report.
- (5) The report shall not be excluded—
 - (a) from the matter supplied under section 1(4)(b) of the Public Bodies (Admission to Meetings) Act 1960 or section 100B(7) of the 1972 Act (supply of agenda etc. to newspapers); or
 - (b) from the documents open to inspection under section 100B(1) of the 1972 Act (public access to agenda and reports before meetings).
- (6) Part VA of the 1972 Act has effect in relation to the report as if section 100C(1)(d) of that Act (public access to copies of reports for six years after meeting) were not limited to so much of the report as relates to an item during which the meeting was open to the public.

11 Consideration of reports or recommendations

- (1) A body to which this section applies shall consider in accordance with this section and section 12—
 - (a) any report under section 8, and
 - (b) any written recommendation within subsection (3),
 sent to the body or (if a parish meeting) its chairman in connection with the audit of its accounts.
- (2) This section applies to every body subject to audit except—
 - (a) charter trustees constituted under section 246 of the 1972 Act;

Status: This is the original version (as it was originally enacted).

- (b) health service bodies;
 - (c) port health authorities;
 - (d) licensing planning committees;
 - (e) internal drainage boards;
 - (f) probation committees; and
 - (g) Passenger Transport Executives.
- (3) A written recommendation is within this subsection if it is made to the body concerned by an auditor and is stated in the document containing it to be one which in the auditor's opinion should be considered under this section.
- (4) The body concerned shall consider the report or recommendation at a meeting held before the end of four months beginning with the day on which the report or recommendation was sent to the body or its chairman (as the case may be).
- (5) At that meeting the body shall decide—
- (a) whether the report requires the body to take any action or whether the recommendation is to be accepted; and
 - (b) what, if any, action to take in response to the report or recommendation.
- (6) If an auditor is satisfied that it is reasonable to allow more time for the body to comply with its duties under subsections (4) and (5) in relation to a report or recommendation, the auditor may, in relation to that report or recommendation, extend the period of four months mentioned in subsection (4).
- (7) A period may be extended under subsection (6) whether or not it has already been extended under that subsection once or more than once.
- (8) Nothing in section 101 of the 1972 Act (delegation of functions) applies to a duty imposed on a body by this section.
- (9) This section is without prejudice to any duties (so far as they relate to the subject-matter of a report or recommendation sent to a body to which this section applies) which are imposed by or under this Act, sections 114 to 116 of the Local Government Finance Act 1988 (functions and reports of finance officers), section 5 of the Local Government and Housing Act 1989 (functions of monitoring officers) or any other enactment.

12 Publicity for meetings under section 11

- (1) A meeting shall not be held for the purposes of section 11 unless, at least seven clear days before the meeting, there has been published, in a newspaper circulating in the area of the body concerned, a notice which—
- (a) states the time and place of the meeting,
 - (b) indicates that the meeting is to be held to consider an auditor's report or recommendation (as the case may be), and
 - (c) describes the subject-matter of the report or recommendation.
- (2) The body concerned shall ensure that, as soon as practicable after the meeting—
- (a) the auditor of its accounts is notified of the decisions made in pursuance of section 11(5); and
 - (b) a notice containing a summary of those decisions which has been approved by the auditor is published in a newspaper circulating in that body's area.

Status: This is the original version (as it was originally enacted).

- (3) The notice required by subsection (2)(b) in relation to a meeting—
- (a) need not summarise any decision made while the public were excluded from the meeting—
 - (i) under section 100A(2) of the 1972 Act (confidential matters);
 - (ii) in pursuance of a resolution under section 100A(4) of that Act (exempt information); or
 - (iii) in pursuance of a resolution under section 1(2) of the Public Bodies (Admission to Meetings) Act 1960 (protection of public interest);
 but
 - (b) if sections 100C and 100D of the 1972 Act (availability for inspection after meetings of minutes, background papers and other documents) apply in relation to the meeting, shall indicate the documents in relation to the meeting which are open for inspection in accordance with those sections.
- (4) This section is without prejudice to, and in addition to, any provision made in relation to meetings of the body in question by section 10(4) to (6) or by or under the 1972 Act, the Public Bodies (Admission to Meetings) Act 1960 or any other enactment.

13 Additional publicity for immediate reports

- (1) This section applies where under section 10(1) an auditor has sent an immediate report to a body or its chairman, except where the body is a health service body.
- (2) From the time when the report is received by virtue of section 10(1), any member of the public may—
- (a) inspect the report at all reasonable times without payment,
 - (b) make a copy of it, or of any part of it, and
 - (c) require the body or chairman to supply him with a copy of it, or of any part of it, on payment of a reasonable sum.
- (3) On receiving the report by virtue of section 10(1), the body or (if a parish meeting) its chairman shall forthwith publish in one or more local newspapers circulating in the area of the body a notice which—
- (a) identifies the subject-matter of the report, and
 - (b) states that any member of the public may inspect the report and make a copy of it or any part of it between such times and at such place or places as are specified in the notice;
- and the body, if not a parish meeting, shall in addition forthwith supply a copy of the report to every member of the body.
- (4) The auditor may—
- (a) notify any person he thinks fit of the fact that he has made the report, and
 - (b) supply a copy of it or of any part of it to any person he thinks fit.
- (5) A person who has the custody of an immediate report and—
- (a) obstructs a person in the exercise of a right conferred by subsection (2)(a) or (b), or
 - (b) refuses to supply a copy of the report or of part of it (as the case may be) to a person entitled to the copy by virtue of subsection (2)(c),
- is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Status: This is the original version (as it was originally enacted).

- (6) A person who fails to comply with a requirement of subsection (3) is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (7) Nothing in this section affects the operation of section 10(4) to (6).

Public inspection etc. and action by the auditor

14 Inspection of statements of accounts and auditors' reports

- (1) A local government elector for the area of a body subject to audit, other than a health service body, may—
- (a) inspect and make copies of any statement of accounts prepared by the body pursuant to regulations under section 27;
 - (b) inspect and make copies of any report, other than an immediate report, made to the body by an auditor; and
 - (c) require copies of any such statement or report to be delivered to him on payment of a reasonable sum for each copy.
- (2) A document which a person is entitled to inspect under this section may be inspected by him at all reasonable times and without payment.
- (3) A person who has the custody of any such document and—
- (a) obstructs a person in the exercise of a right under this section to inspect or make copies of the document, or
 - (b) refuses to give copies of the document to a person entitled under this section to obtain them,
- is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (4) References in this section to copies of a document include references to copies of any part of it.

15 Inspection of documents and questions at audit

- (1) At each audit under this Act, other than an audit of accounts of a health service body, any persons interested may—
- (a) inspect the accounts to be audited and all books, deeds, contracts, bills, vouchers and receipts relating to them, and
 - (b) make copies of all or any part of the accounts and those other documents.
- (2) At the request of a local government elector for any area to which the accounts relate, the auditor shall give the elector, or any representative of his, an opportunity to question the auditor about the accounts.
- (3) Nothing in this section entitles a person—
- (a) to inspect so much of any accounts or other document as contains personal information about a member of the staff of the body whose accounts are being audited; or
 - (b) to require any such information to be disclosed in answer to any question.

Status: This is the original version (as it was originally enacted).

- (4) For the purposes of subsection (3), information is to be regarded as personal information about a member of a body's staff if it relates specifically to a particular individual and is available to the body for reasons connected with the fact—
- (a) that that individual holds or has held an office or employment under that body; or
 - (b) that payments or other benefits in respect of an office or employment under any other person are or have been made or provided to that individual by that body.
- (5) For the purposes of subsection (4)(b), payments made or benefits provided to an individual in respect of an office or employment include any payment made or benefit provided to him in respect of his ceasing to hold the office or employment.

16 Right to make objections at audit

- (1) At each audit of accounts under this Act, other than an audit of accounts of a health service body, a local government elector for an area to which the accounts relate, or any representative of his, may attend before the auditor and (in accordance with subsection (2)) make objections—
- (a) as to any matter in respect of which the auditor could take action under section 17 or 18; or
 - (b) as to any other matter in respect of which the auditor could make a report under section 8.
- (2) No objection may be made under subsection (1) unless the auditor has received written notice of the proposed objection and of the grounds on which it is to be made.
- (3) An elector sending a notice to an auditor for the purposes of subsection (2) shall at the same time send a copy of the notice to the body whose accounts are being audited.

17 Declaration that item of account is unlawful

- (1) Where—
- (a) it appears to the auditor carrying out an audit under this Act, other than an audit of accounts of a health service body, that an item of account is contrary to law, and
 - (b) the item is not sanctioned by the Secretary of State,
- the auditor may apply to the court for a declaration that the item is contrary to law.
- (2) On an application under this section the court may make or refuse to make the declaration asked for, and if it makes the declaration then, subject to subsection (3), it may also—
- (a) order that any person responsible for incurring or authorising expenditure declared unlawful shall repay it in whole or in part to the body in question and, where there are two or more such persons, that they shall be jointly and severally liable to do so;
 - (b) if the expenditure declared unlawful exceeds £2,000 and the person responsible for incurring or authorising it is, or was at the time of his conduct in question, a member of a local authority, order him to be disqualified for being a member of a local authority for a specified period; and
 - (c) order rectification of the accounts.

Status: This is the original version (as it was originally enacted).

- (3) The court shall not make an order under subsection (2)(a) or (b) if satisfied that the person responsible for incurring or authorising the expenditure acted reasonably or in the belief that the expenditure was authorised by law, and in any other case shall have regard to all the circumstances, including that person's means and ability to repay the expenditure or any part of it.
- (4) A person who has made an objection under section 16(1)(a) and is aggrieved by a decision of an auditor not to apply for a declaration under this section may—
 - (a) not later than six weeks after being notified of the decision, require the auditor to state in writing the reasons for his decision, and
 - (b) appeal against the decision to the court;and on such an appeal the court has the same powers in relation to the item of account to which the objection relates as if the auditor had applied for the declaration.
- (5) On an application or appeal under this section relating to the accounts of a body, the court may make such order as it thinks fit for the payment by the body of expenses incurred, in connection with the application or appeal, by—
 - (a) the auditor,
 - (b) the person to whom the application or appeal relates, or
 - (c) the person by whom the appeal is brought.
- (6) The High Court and the county courts have jurisdiction for the purposes of this section.
- (7) In this section “local authority” includes—
 - (a) the Common Council;
 - (b) the Council of the Isles of Scilly;
 - (c) the Broads Authority;
 - (d) the Navigation Committee of the Broads Authority;
 - (e) a National Park authority;
 - (f) a police authority established under section 3 of the Police Act 1996; and
 - (g) the Service Authority for the National Crime Squad.

18 Recovery of amount not accounted for etc

- (1) Where it appears to the auditor carrying out an audit under this Act, other than an audit of accounts of a health service body—
 - (a) that any person has failed to bring into account a sum which should have been brought into account and that the failure has not been sanctioned by the Secretary of State, or
 - (b) that a loss has been incurred or deficiency caused by the wilful misconduct of any person,the auditor shall certify that the sum, or the amount of the loss or deficiency, is due from that person.
- (2) Subject to subsections (4) and (8), both the auditor and the body concerned (or, if it is a parish meeting, its chairman) may recover for the benefit of the body a sum or amount certified under this section as due; and if the sum or amount is certified to be due from two or more persons, they shall be jointly and severally liable for it.
- (3) A person aggrieved by a decision of an auditor to certify under this section that a sum or amount is due from him may—

Status: This is the original version (as it was originally enacted).

- (a) not later than six weeks after being notified of the decision, require the auditor to state in writing the reasons for his decision, and
 - (b) appeal against the decision to the court.
- (4) On an appeal under subsection (3) the court may—
 - (a) confirm, vary or quash the decision, and
 - (b) give any certificate which the auditor could have given.
- (5) A person who has made an objection under section 16(1)(a) and is aggrieved by a decision of an auditor not to certify under this section that a sum or amount is due from another person may—
 - (a) not later than six weeks after being notified of the decision, require the auditor to state in writing the reasons for his decision, and
 - (b) appeal against the decision to the court.
- (6) On an appeal under subsection (5) the court may—
 - (a) confirm or quash the decision, and
 - (b) give any certificate which the auditor could have given.
- (7) If a certificate under this section relates to a loss or deficiency caused by the wilful misconduct of a person who is, or was at the time of the misconduct, a member of a local authority and the amount certified to be due from him exceeds £2,000, that person shall be disqualified for being a member of a local authority for five years beginning—
 - (a) on the ordinary date on which the period for bringing an appeal against a decision to give the certificate expires, or
 - (b) if such an appeal is brought, on the date on which the appeal is finally disposed of or abandoned or fails for non-prosecution.
- (8) A sum or amount certified under this section to be due from any person is payable within 14 days after the date of issue of the certificate or, if an appeal is brought, within 14 days after the appeal is finally disposed of or abandoned or fails for non-prosecution.
- (9) In proceedings for the recovery of a sum or amount due under this section—
 - (a) a certificate signed by an auditor appointed by the Commission stating that the sum or amount is due from a person specified in the certificate to a body specified there is conclusive evidence of that fact; and
 - (b) a certificate purporting to be so signed shall be taken to have been so signed unless the contrary is proved.
- (10) On an appeal under this section relating to the accounts of a body, the court may make such order as it thinks fit for the payment by that body of expenses incurred in connection with the appeal by—
 - (a) the auditor,
 - (b) the person to whom the appeal relates, or
 - (c) the person by whom the appeal is brought.
- (11) Any expenses incurred by an auditor in recovering a sum or amount certified under this section to be due in connection with the accounts of a body, so far as not recovered from any other source, are recoverable from that body unless the court otherwise directs.
- (12) Subsections (6) and (7) of section 17 also apply for the purposes of this section.

Prevention of unlawful expenditure etc.

19 Health service bodies: referral to Secretary of State

If the auditor for the time being of the accounts of a health service body 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 incurring of expenditure which is unlawful, or
- (b) is about to take, or has taken, a course of action which, if pursued to its conclusion, would be unlawful and likely to cause a loss or deficiency,

he shall refer the matter forthwith to the Secretary of State.

20 Other bodies: prohibition orders

(1) The auditor for the time being of the accounts of a body subject to audit other than a health service body may issue an order under this section (a “prohibition order”) 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;
- (b) is about to take or has taken 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 22, 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) A prohibition order is an order 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 order relates;
- (c) specifies the date on which (subject to subsection (6)) the order is to take effect, which must not be earlier than the date of service of a copy of the order in accordance with paragraph (a) or (as the case may be) paragraphs (a) and (b) of subsection (5); and
- (d) requires the body or officer concerned to desist from making or implementing the decision, taking or continuing to take the course of action or entering the item of account in question (as the case may be).

(4) Where two or more auditors are appointed in relation to the accounts of any body—

- (a) the power to issue a prohibition order may be exercised by the auditors acting jointly or by such one of them as they may determine; and
- (b) in relation to such an order, references in subsections (5) and (6) to the auditor are references to the auditor or auditors by whom the order is issued.

(5) A copy of a prohibition order—

- (a) shall be served on the body to which, or to an officer of which, it is addressed;
- (b) in the case of an order 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) A prohibition order does not have effect unless, not later than the end of the period of seven days beginning on the date of service referred to in subsection (3)(c), the auditor serves on the body concerned and on any officer on whom a copy of the order was served under subsection (5)(b), a statement of the auditor's reasons for the belief referred to in subsection (1).
- (7) Where this section requires a copy of an order or statement 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) A prohibition order may at any time be revoked (but not varied) 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 order was addressed.

21 Restriction on power to issue prohibition orders

- (1) Where—
 - (a) a report is made under section 114(2) of the Local Government Finance Act 1988 (“the 1988 Act”) (chief finance officer’s report on unlawful expenditure etc.), and
 - (b) copies of the report are sent in accordance with section 114(4) of the 1988 Act, no prohibition order may be issued during the relevant period as regards any decision, course of action or item of account which led to the report being made.
- (2) For the purposes of subsection (1) the relevant period is the period—
 - (a) beginning with the day on which copies of the report are sent, and
 - (b) ending with the day (if any) on which the body’s consideration of the report under section 115(2) of the 1988 Act begins.
- (3) If the body fails to hold the meeting to consider the report within the time limit specified in section 115(3) of the 1988 Act that failure is immaterial for the purposes of subsection (2)(b) above.

22 Effect of and appeals against prohibition orders

- (1) While a prohibition order has effect, it is not lawful for the body concerned or any officer of that body to make or implement the decision, to take or continue to take the course of action or to enter the item of account to which the order relates (as the case may be).
- (2) A prohibition order—
 - (a) takes effect, subject to subsection (6) of section 20, on the date specified in the order in accordance with subsection (3)(c) of that section; and
 - (b) continues to have effect, subject to any order or decision of the High Court on an appeal under subsection (3) below, until revoked under section 20(8).
- (3) Not later than 28 days after service under section 20(6) of a statement of reasons relating to a prohibition order, the body concerned (but not an officer of that body) may appeal against the order to the High Court in accordance with rules of court.
- (4) On an appeal against a prohibition order under subsection (3), the High Court may make such order as it thinks fit for the payment by the body concerned of expenses incurred by the auditor in connection with the appeal.

- (5) Any expenses reasonably incurred by the auditor in or in connection with the issue of a prohibition order are recoverable by him from the body concerned.
- (6) In this section “the body concerned”, in relation to a prohibition order, means the body to which, or to any officer of which, the order is addressed.

23 Loss etc. caused by prohibition orders

- (1) Where—
 - (a) before a prohibition order is issued, a body enters into a contract to dispose of or acquire an interest in land, and
 - (b) before the disposal or acquisition is completed, a prohibition order takes effect as a result of which it is unlawful for the body to complete the disposal or acquisition,the existence of the prohibition order 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 a prohibition order which was issued in good faith; but that does not affect the right of a court to award costs against an auditor on an appeal under section 22(3).

24 Power of auditor to apply for judicial review

- (1) Subject to section 31(3) of the Supreme Court Act 1981 (no application for judicial review without leave) the auditor appointed in relation to the accounts of a body other than a health service body may make an application for judicial review with respect to—
 - (a) any decision of that body, or
 - (b) any failure by that body to act,which it is reasonable to believe would have an effect on the accounts of that body.
- (2) The existence of the powers conferred on an auditor under this Act is not a ground for refusing an application falling within subsection (1) (or an application for leave to make such an application).
- (3) On an application for judicial review made as mentioned in subsection (1), the court may make such order as it thinks fit for the payment, by the body to whose decision the application relates, of expenses incurred by the auditor in connection with the application.

Miscellaneous

25 Extraordinary audit

- (1) The Commission may direct an auditor or auditors appointed by it to hold an extraordinary audit of the accounts of a body subject to audit—
 - (a) if it appears to the Commission to be desirable to do so in consequence of a report made under this Act by an auditor or for any other reason; or

Status: This is the original version (as it was originally enacted).

- (b) where the accounts are not those of a health service body, if an application for such an audit is made by a local government elector for the area of the body in question.
- (2) If it appears to the Secretary of State that it is desirable in the public interest that there should be an extraordinary audit of the accounts of a body subject to audit he may require the Commission to direct such an audit by an auditor or auditors appointed by it.
- (3) The following provisions apply to an extraordinary audit under this section as they apply to an ordinary audit under this Act—
 - (a) in relation to the accounts of a body other than a health service body, sections 3, 5, 6, 8 to 13 and 16 to 18; and
 - (b) in relation to the accounts of a health service body, sections 3, 5, 6 and 8 to 10.
- (4) An extraordinary audit under this section may be held after three clear days' notice in writing to be given to the body whose accounts are to be audited or (if it is a parish meeting) to be given to its chairman.
- (5) The expenditure incurred in holding an extraordinary audit of the accounts of any body—
 - (a) shall be defrayed in the first instance by the Commission, but
 - (b) may be recovered by the Commission, if it thinks fit, in whole or part from the body concerned.

26 Audit of accounts of officers

- (1) Where an officer of a body subject to audit receives money or other property—
 - (a) on behalf of that body, or
 - (b) for which he ought to account to that body,the accounts of the officer shall be audited by the auditor of the accounts of that body, and the provisions mentioned in subsection (2) apply with the necessary modifications to the accounts and audit.
- (2) Those provisions are—
 - (a) in the case of an officer of a health service body, sections 2(1), 5 to 10 and 25;
 - (b) in any other case, sections 2(1), 5 to 10, 13 to 18, 25 and 27.

27 Accounts and audit regulations

- (1) The Secretary of State may by regulations applying to bodies subject to audit other than health service bodies make provision with respect to—
 - (a) the keeping of accounts;
 - (b) the form, preparation and certification of accounts and of statements of accounts;
 - (c) the deposit of the accounts of any body at the offices of the body or at any other place;
 - (d) the publication of information relating to accounts and the publication of statements of accounts;
 - (e) the exercise of any rights of objection or inspection conferred by section 14, 15 or 16 and the steps to be taken by any body for informing local government electors for the area of that body of those rights.

Status: This is the original version (as it was originally enacted).

- (2) Regulations under this section may make different provision in relation to bodies of different descriptions.
- (3) Before making any regulations under this section the Secretary of State shall consult—
 - (a) the Commission,
 - (b) such associations of local authorities as appear to him to be concerned, and
 - (c) such bodies of accountants as appear to him to be appropriate.
- (4) If a person without reasonable excuse contravenes a provision of regulations under this section and the regulations declare that contravention of the provision is an offence, that person is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (5) Any expenses incurred by an auditor in connection with proceedings in respect of an offence under subsection (4) alleged to have been committed in relation to the accounts of any body, so far as not recovered from any other source, are recoverable from that body.

28 Certification of claims, returns etc

- (1) The Commission shall, if so required by the body concerned, make arrangements—
 - (a) for certifying claims and returns in respect of grants or subsidies made or paid by any Minister of the Crown or public authority to any body subject to audit;
 - (b) for certifying any account submitted by any such body to any such Minister with a view to obtaining payment under a contract between that body and the Minister;
 - (c) for certifying the body’s calculation under paragraph 5(6)(a) of Schedule 8 to the Local Government Finance Act 1988 of the amount of its non-domestic rating contribution for a financial year, and for certifying the amount calculated; or
 - (d) for certifying any return by the body which, by or under any enactment, is required or authorised to be certified by the body’s auditor or under arrangements made by the Commission;and in paragraph (a) “public authority” means a body established by or under the Treaties or by or under any enactment.
- (2) The Commission shall charge the body concerned such fees for services provided under this section as will cover the full cost of providing them.

29 Agreed audit of accounts

- (1) The Commission may, with the consent of the Secretary of State and by agreement with the body concerned, undertake the audit of the accounts of any body which—
 - (a) appears to the Secretary of State to be connected with local government or the National Health Service; and
 - (b) is not a body subject to audit.
- (2) An audit carried out under this section shall be carried out in such manner as the Commission and the body concerned may agree and references in this Part or Part III to an audit carried out under this Act do not include an audit carried out under this section.

Status: This is the original version (as it was originally enacted).

- (3) Subsection (2) is without prejudice to any other statutory provisions which apply to an audit under this section.
- (4) The Commission shall charge the body such fees for services provided under this section as will cover the full cost of providing them.

30 Passenger Transport Executives

- (1) In relation to a Passenger Transport Executive this Act applies with the following modifications—
 - (a) under section 3(3) the Commission shall consult the relevant authority instead of the Executive;
 - (b) in sections 14(1), 15(2), 16(1), 25(1)(b) and 27(1)(e) references to a local government elector for an area such as is mentioned there are to be read as references to a local government elector for the area of the relevant authority;
 - (c) in section 10, subsections (1) and (3) apply in relation to the relevant authority as well as the Executive, and subsections (4) to (6) apply only to the relevant authority;
 - (d) in section 13, subsections (2) and (3) apply in relation to the relevant authority as well as the Executive, but the reference in subsection (3) to one or more local newspapers circulating in the area of the body is to be read as a reference to one or more such newspapers circulating in the area of the relevant authority;
 - (e) the notice required to be given by section 25(4) shall be given to the relevant authority as well as the Executive.
- (2) Section 14(1)(a) of the Transport Act 1968 (accounts and other records of Passenger Transport Executives) is subject to any regulations under section 27.
- (3) In subsection (1) “the relevant authority”, in relation to a Passenger Transport Executive, means the Passenger Transport Authority for the area for which the Executive is established.

31 Companies related to Passenger Transport Executives

- (1) Subject to subsection (2), where a Passenger Transport Executive have a subsidiary they shall exercise their control over it so as to ensure that it appoints only auditors who—
 - (a) are approved by the Commission for appointment as the subsidiary’s auditors, and
 - (b) are qualified for the appointment in accordance with section 25 of the Companies Act 1989.
- (2) Where a company would, if an Executive and any other body or bodies subject to audit were a single body corporate, be a subsidiary of that body corporate—
 - (a) subsection (1) does not apply, but
 - (b) it is the joint duty of the Executive and the other body or bodies concerned to exercise such control over the company as the Executive are required by subsection (1) to exercise over a subsidiary of theirs.
- (3) In this section “subsidiary” means a subsidiary within the meaning of section 736 of the Companies Act 1985.

32 Documents relating to police authorities etc

- (1) The Commission shall send to the Secretary of State a copy of any report of which a copy is sent to the Commission under section 10(2) and which relates to—
 - (a) a police authority established under section 3 of the Police Act 1996, or
 - (b) the Service Authority for the National Crime Squad.
- (2) If it appears to the Commission appropriate to do so, it may send to the Secretary of State a copy of any document which—
 - (a) relates to one or more police authorities established under section 3 of the Police Act 1996 and has been sent (or a copy of which has been sent) by the Commission to such an authority, or
 - (b) relates to the Service Authority for the National Crime Squad and has been sent (or a copy of which has been sent) by the Commission to that Authority.