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STATUTORY INSTRUMENTS

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**1995 No. 401**

**The Local Government Residuary Body (England) Order 1995**

**PART I  
GENERAL**

**Citation and commencement**

1. This Order may be cited as the Local Government Residuary Body (England) Order 1995 and shall come into force on 1st April 1995.

**Interpretation**

2. In this order—

“the Act” means the Local Government Act 1992;

“the 1972 Act” means the Local Government Act 1972<sup>(1)</sup>

“abolished authority” means a principal council which is or is to be wound up and dissolved by a section 17 order;

“the abolition date”, in relation to an abolished authority, means the date on which the authority is or is to be wound up and dissolved;

“relevant provision” means a statutory instrument under the Act or, in connection with the Act or such an instrument, under any other enactment; and

“section 17 order” means an order under section 17 of the Act.

**PART II  
CONSTITUTION AND MEMBERSHIP**

**Establishment of the Residuary Body**

3. There shall be established a body corporate to be known as the Local Government Residuary Body (England) (“the Residuary Body”).

**Membership**

4.—(1) The Residuary Body shall consist of not less than 3 and not more than 20 members appointed by the Secretary of State, and the Secretary of State shall appoint one of the members to be chairman and may appoint another member to be deputy chairman.

(2) Subject to the provisions of this article, a member shall hold and vacate office in accordance with the terms of his appointment.

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(1) 1972 c. 70.

- (3) A person who ceases to be a member shall be eligible for reappointment as a member.
- (4) A member may resign from office by notice in writing to the Secretary of State.
- (5) The Secretary of State may remove a member from office if satisfied he—
  - (a) is unable or unfit to carry out the functions of a member, or
  - (b) has not complied with the terms of his appointment.
- (5) A person shall cease to be chairman or deputy chairman if he—
  - (a) resigns as such by notice in writing to the Secretary of State; or
  - (b) ceases to be a member;

### **Remuneration, pensions etc.**

5.—(1) The Residuary Body shall pay to its members such remuneration, and such allowances, as the Secretary of State may determine.

- (2) The Residuary Body may—
  - (a) pay such pensions, allowances or gratuities as the Secretary of State may determine to or in respect of any persons who have been or are its members; and
  - (b) make such payments as the Secretary of State may determine towards provision for the payment of pensions, allowances or gratuities to or in respect of any such persons.

(3) If, when a person ceases to be a member of the Residuary Body, the Secretary of State determines that there are special circumstances which make it appropriate that that member should receive compensation, the Residuary Body shall pay to him as compensation such amount as the Secretary of State may determine.

(4) The approval of the Treasury shall be required for any determination of the Secretary of State under this article.

### **Status**

6. The Residuary Body shall not be regarded as acting on behalf of the Crown and neither it nor its members nor members of its staff shall be regarded as Crown servants.

### **Proceedings**

7.—(1) Subject to the following provisions of this Part and any directions given by the Secretary of State, the Residuary Body may regulate its own procedure (including quorum).

- (2) Anything authorised or required to be done by the Residuary Body may be done by—
  - (a) any member of the Residuary Body, or of its staff, who has been authorised for the purpose, whether generally or specially; or
  - (b) by any committee or sub-committee of the Residuary Body which has been so authorised.

(3) A member of the Residuary Body who is directly or indirectly interested in any matter brought up for consideration at a meeting of the Residuary Body, or of a committee or sub-committee of which he is a member, shall disclose the nature of that interest to the meeting and shall not take part in any deliberation or decision of the Residuary Body, committee or sub-committee with respect to that matter.

(4) A member of the Residuary Body, or its staff, who is directly or indirectly interested in any matter connected with anything which he is authorised to do by virtue of paragraph 2(a) above shall disclose the nature of that interest to the Residuary Body and shall not do the thing which he is so authorised to do unless, after the disclosure, he is specially authorised to do so by the Residuary Body.

(5) The validity of any proceedings of the Residuary Body or of any committee or sub-committee shall not be affected—

- (a) by a vacancy amongst its members or a defect in the appointment of a member; or
- (b) by a contravention of paragraph (3) or of direction given in respect of the exercise of the power in paragraph (1) above to regulate procedure.

(6) The validity of anything done by a member of the Residuary Body, or of its staff, in pursuance of an authorisation given under paragraph 2(a) above, shall not be affected by a contravention of paragraph (4) above.

#### **Application of seal and proof of instruments**

**8.—**(1) The application of the seal of the Residuary Body shall be authenticated by the signature of any member of the Residuary Body, or of its staff, whom it has authorised, whether generally or specially, for the purpose.

(2) Every document purporting to be an instrument issued by the Residuary Body and to be duly sealed with its seal or to be signed on its behalf shall be received in evidence, and, unless the contrary is shown, shall be deemed to be an instrument so issued.

#### **Supervision by Parliamentary Commissioner**

**9.** The residuary Body shall be included among the authorities to which the Parliamentary Commissioner Act 1967(2) applies.

#### **House of Commons disqualification**

**10.** Any member of the Residuary Body who is in receipt of remuneration shall, for the purposes of the House of Commons Disqualification Act 1975(3), be treated as holding an office described in Part III of Schedule 1 to that Act (other disqualifying offices).

## **PART III**

### **ACCOUNTS, AUDIT AND REPORTS**

#### **Accounts**

**11.—**(1) The Residuary Body shall keep proper accounts and proper records in relation to them.

(2) The Secretary of State may give directions to the Residuary Body requiring it—

- (a) to keep accounts in respect of such matters, and records, relating to them as may be specified in the directions; and
- (b) to comply with such methods and principles as may be so specified with respect to any accounts or records kept by it.

(3) The Residuary Body shall prepare in respect of each financial year a statement of accounts which complies with any requirement which the Secretary of State has, with the approval of the Treasury, notified in writing to the Residuary Body relating to the information to be contained in the statement, the manner in which the information is to be presented and the methods or principles according to which the statement is to be prepared.

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(2) 1967 c. 13.

(3) 1975 c. 24.

## **Audit**

**12.**—(1) The accounts of the Residuary Body shall be included among those which are required to be audited in accordance with Part III of the Local Government Finance Act 1982 (accounts and audit) (“the 1982 Act”)(4)and, subject to paragraph (2) below, that Part shall accordingly have effect in relation to the Residuary Body and its accounts.

(2) Section 15(1)(a), 17, 19, 20, 23 and 24 of the 1982 Act shall not apply in relation to the Residuary Body or its accounts and section 22 (extraordinary audit) of that Act shall have effect as if—

- (a) in paragraph (a) of subsection (1), for the words “for the area of that body”there were substituted the words “for any area to which the accounts relate”; and
- (b) in subsection (3), for the words “and 15 to 20 above, except subsections (1) and (2) of section 17”there were substituted the words “15 (except subsection (1)(a)), 16 and 18”.

(3) At each audit of the accounts of the Residuary Body, any local government elector for any area to which the accounts to be audited relate may inspect those accounts and all records relating to them and make copies of all or any part of the accounts and those records.

(4) At the request of any such local government elector, the auditor shall give the elector, or his representative, an opportunity to question him about those accounts or to draw his attention to any matter on which he could make a report under section 15(3) of the 1982 Act.

(5) As soon as the audit of its accounts has been concluded, the Residuary Body shall send to the Secretary of State a copy of the statement of accounts prepared under article 11(3) together with a copy of any report made on that statement or the accounts by the auditor.

(6) Any person, on application to the Residuary Body, shall be entitled—

- (a) at all reasonable times, to inspect and make copies of any statement prepared under article 11(3) and any report made by the auditor on the statement or on the accounts of the Residuary Body; and
- (b) to be furnished with copies of any such statement or report on payment of such reasonable sum as the Residuary Body may determine.

(7) Any document which a person is entitled to inspect under paragraphs (3) or (6) above may be inspected by him at all reasonable times and without payment.

## **Reports and information**

**13.**—(1) The Residuary Body shall publish an annual report on the discharge of its functions and shall send a copy of each such report to the Secretary of State.

(2) The Residuary Body shall provide the Secretary of State with such information relating to the discharge of its functions and to its finances (including estimates of its future income and expenditure) as he may require and, for that purpose, shall permit any person authorised by him to inspect and make copies of any of its accounts or other documents and shall afford such explanation of them as that person or the Secretary of State may require.

## **Laying of reports etc. before Parliament**

**14.** The Secretary of State shall lay before each House of Parliament copies of—

- (a) any statement of accounts and any report on them sent to him pursuant to article 12; and
- (b) any annual report sent to him pursuant to article 13.

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(4) 1982 c. 32.

## PART IV

### FUNCTIONS OF THE RESIDUARY BODY

#### General duty of Residuary Body

**15.**—(1) Subject to the following provisions of this Part and to any directions given by the Secretary of State, the Residuary Body shall make such arrangements as are practicable for the transfer to other persons of any property, rights or liabilities (and any related functions) which have vested in it by virtue of a relevant instrument or submit proposals to the Secretary of State for effecting such transfers by orders made by him under section 22(3)(a) of the Act.

(2) The Residuary Body shall use its best endeavours to secure that any such arrangements or proposals as are mentioned in paragraph (1) above are made or submitted as soon as is practicable after the date the property, rights, liabilities or functions concerned have vested in it and, in any event, by the end of the period of five years beginning with that date.

#### Acquisition and disposal of land

**16.**—(1) The Residuary Body may, with the consent of the Secretary of State, acquire by agreement any land required by it for carrying out its functions

(2) Any disposal by the Residuary Body of land in pursuance of article 15(1) shall be subject to article 17, to the same restrictions as those imposed by subsections (2) and (2A) of section 123 of the 1972 Act<sup>(5)</sup> in the case of disposals by a principal council under subsection (1) of that section and to any other restrictions to which it is subject by virtue of the following provisions of this Part.

#### Directions

**17.**—(1) In exercising the functions conferred on it by this Order or any other relevant instrument, the Residuary Body shall comply with directions given to it by the Secretary of State.

(2) No other provision of this Order relating to the giving of directions by the Secretary of State shall be construed as prejudicing the generality of paragraph (1) above; and any directions given by the Secretary of State may be of a general or particular nature any may be varied or revoked by subsequent directions.

#### Application of local government provisions

**18.** The Schedule to this Order shall have effect with respect to the Residuary Body.

## PART V

### FINANCIAL PROVISIONS

#### Interpretation

**19.** In this Part—

“the 1992 Act” means the Local Government Finance Act 1992<sup>(6)</sup>;

“billing authority” and “major precepting authority” have the same meanings as in the 1992 Act;

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<sup>(5)</sup> Section 129(2A) was inserted by paragraph 14 of Schedule 23 to the Local Government, Planning and Land Act 1980 (c. 65).

<sup>(6)</sup> 1992 c. 14.

“central expenditure” means expenditure of the Residuary Body other than relevant expenditure;

“relevant authority” means an abolished authority any of whose property, rights or liabilities (or related functions) are transferred to the Residuary Body by a relevant instrument;

“relevant area”, in relation to a successor authority, means the area in relation to which that authority, on and after the abolition date, exercises functions which immediately before that date were exercisable by an abolished authority;

“relevant expenditure” means the expenditure of the Residuary Body in connection with all the property, rights or liabilities (or related functions) of abolished authorities transferred to it by relevant instruments; and

“successor authority”, in relation to a relevant authority, means—

- (a) where an order gives effect to a structural change, a principal council to which any functions of the relevant authority are transferred on the abolition date; and
- (b) where an order gives effect to a boundary change, a principal council whose area, on and after that date, includes an area which, before that date, is the whole or any part of the area of the relevant authority.

### **Power to issue levies**

**20.**—(1) In accordance with the following provisions of this Part and subject to any directions given by the Secretary of State, the Residuary Body may, in respect of a financial year beginning after the abolition date (“the current year”), issue levies to the successor authorities in relation to a relevant authority in respect of any of the following matters for which provision is not otherwise made—

- (a) expenditure which the Residuary Body estimates it will incur in that year in connection with any property, rights or liabilities or related functions which were transferred from the relevant authority to the Residuary Body by a relevant instrument;
- (b) expenditure incurred by it in that connection in any financial year preceding that year (“a preceding year”);
- (c) such allowance (if any) as the Residuary Body estimates will be appropriate for contingencies in relation to its expenditure for the current year;
- (d) any financial reserves which the Residuary Body estimates it will be appropriate to raise in that year for meeting its estimated future expenditure; and
- (e) such proportion of the Residuary Body’s estimate of its central expenditure for the current year, or its actual central expenditure for a preceding year, as it determines should be borne by those successor authorities.

(2) In making a determination under sub-paragraph (e) of paragraph (1) above, the Residuary Body shall have regard to the proportion which the aggregate of—

- (a) the expenditure which the Residuary Body estimates it will incur in the current year in connection with the matters mentioned in sub-paragraph (a) of that paragraph; and
- (b) the expenditure incurred by it in that connection in any preceding year,

bears to the aggregate of the relevant expenditure which the Residuary Body estimates it will incur in the current year and the relevant expenditure incurred by it in any preceding year.

(3) Where the Secretary of State so directs, the amount of the levies issued under paragraph (1) above shall not exceed such amount as is either specified in the direction or ascertained in accordance with a method of calculation which is so specified; and any such direction shall be given before 31st December in the financial year preceding the current year (“the immediately preceding year”).

(4) Any levies shall be issued before 15th February in the immediately preceding year; but they are not invalid merely because they are issued on or after that date.

(5) Paragraph (4) above does not apply to a substituted levy issued in accordance with article 22.

### **Apportionment of levies**

**21.**—(1) The amount to be levied by the Residuary Body under article 20(1) on each of the successor authorities in relation to a relevant authority shall be determined by apportioning the total amount to be levied on all those authorities in respect of the year in such proportions as those authorities may agree or, in default of such agreement, the relevant proportions.

(2) For the purposes of this article, the relevant proportion in relation to any successor authority in relation of a relevant authority is the proportion equal to the proportion which the council tax base for the current year of the relevant area in relation to the successor authority bears to the total of the council tax bases for that year of the relevant areas in relation to all such successor authorities.

(3) For the purposes of this article, the council tax base for the current year for the relevant area in relation to a successor authority is—

- (a) Where the authority is a billing authority and the whole of the authority's area is the relevant area, the amount calculated by the authority as its council tax base for the year in accordance with rules for the time being effective (as regards that year) under regulations made under section 33(5) of the 1992 Act;
- (b) Where the authority is a major precepting authority and the whole of the authority's area is the relevant area, the aggregate of the amounts calculated by the billing authorities to which the authority has the power to issue precepts ("the relevant billing authorities") as their council tax bases for the year for their areas in accordance with the rules for the time being effective (as regards that year) under regulations made under section 44(5) of the 1992 Act;
- (c) where the authority is a billing authority and only part of the authority's area is the relevant area, the amount calculated by the authority as its council tax base for the year for that part of its area in accordance with the rules for the time being effective (as regards that year) under regulations made under section 34(4) of the 1992 Act; or
- (d) where the authority is a major precepting authority and only a part of the authority's area is the relevant area, the aggregate of the amounts calculated by the relevant billing authorities as their council tax bases for the year for so much of their areas as falls within the relevant area in accordance with rules for the time being effective (as regards that year) under regulations made under section 45(4) of the 1992 Act.

(4) Where a levy is required to be apportioned in the relevant proportions, each successor authority shall, within the period beginning on 1st December and ending on 31st January in the immediately preceding year, inform the Residuary Body of the council tax base for the current year for the relevant area.

(5) In a case falling within paragraph (3)(d) above—

- (a) the successor authority shall, as soon as is practicable after the abolition date, notify the relevant billing authorities of the boundaries of so much of their areas as falls within the relevant area; and
- (b) the relevant billing authorities shall, within the period beginning on 1st December and ending on 31st December in the immediately preceding year, make the calculation mentioned in that sub-paragraph and notify the successor authority of the amount so calculated.

### Substitution of levies

**22.**—(1) Subject to the following provisions of this article, the Residuary Body may issue a levy for the current year in substitution for a levy which it has previously issued for that year (including a levy previously issued in substitution).

(2) Except as provided by paragraph (3) below, no levy may be issued in substitution if its amount would be greater than the amount of the levy for which it is substituted.

(3) The amount of any levy issued in substitution (“the new levy”) may be greater than the amount of that for which it is substituted (“the old levy”) if the old levy has been quashed because of a failure to fulfil the requirements of article 21, but only so far as the new levy is required to be increased to effect a proper apportionment.

(4) Subject to paragraph (5) below, where the Residuary Body issues a new levy, anything paid to it by reference to the old levy shall be treated as paid by reference to the new levy.

(5) Where the amount of the old levy exceeds that of the new levy, anything paid which would not have been paid if the amount of the old levy had been the same as that of the new levy—

- (a) shall, if the successor authority by whom it was paid so requires, be repaid; or
- (b) in any other case, shall (as the Residuary Body determines) be repaid or credited against any subsequent liability of the successor authority in respect of any levy issued by the Residuary Body.

### Payment of levies

**23.**—(1) Subject to paragraph (2) below, the amount of a levy issued to a successor authority by the Residuary Body shall (after deducting any amount credited in accordance with article 22(5)(b)) be paid in full by that authority in the current year, at such time and in such instalments (if any) as may be agreed between the Residuary Body and the authority or, in default of such agreement, in five equal instalments, payable respectively by the end of April, June, August, October and December in that year.

(2) No instalment of a levy shall be payable until 30 days after the levy is issued.

### Interest on unpaid levies

**24.**—(1) Where any amount of levy issued by the Residuary Body is not paid by a successor authority by the due date for payment, interest shall be payable by that authority in accordance with paragraph (2) below.

(2) Interest shall be simple interest, calculated from day to day on the unpaid amount from the due date for payment until the date when payment is made, at a rate equivalent to 2 per cent. above the highest base rate quoted from time to time by any of the reference banks.

(3) For the purposes of paragraph (2) below—

- (a) the reference banks are the seven largest institutions—
  - (i) authorized by the Bank of England under the banking Act<sup>(7)</sup>; and
  - (ii) incorporated in and carrying on a deposit-taking business within the United Kingdom which quote a base rate in sterling; and
- (b) the size of an institution is to be determined by reference to its total consolidated gross assets denominated in sterling, as shown in its audited end-year accounts last published before the period in respect of which interest is payable begins

(4) In paragraph (3) above—

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(7) 1987 c. 22.



“deposit-taking business” has the meaning given in section 6 of the Banking Act 1987 subject to any order under section 7 of that Act; and

the reference to the consolidated gross assets of an institution is a reference to the gross assets of that institution together with any subsidiary (within the meaning of section 736 of the Companies Act 1985<sup>(8)</sup>).

### **Distribution of capital and other money**

**25.**—(1) Subject to the following provisions of this article, the Residuary Body shall, in accordance with directions given by the Secretary of State, pay to each of the successor authorities in relation to a relevant authority the appropriate proportion of any money for the time being in its hands to which paragraph (2) applies and which is not reserved money.

(2) This paragraph applies to—

- (a) all sums received by the Residuary Body in respect of a transfer, pursuant to article 15(1), of any property or rights which were transferred from the relevant authority to the Residuary Body by a relevant instrument; and
- (b) any other money which the Residuary Body determines is held for the purposes of or in connection with any property, rights, liabilities or related functions which were so transferred and is no longer required for those purposes or in that connection.

(3) In paragraph (1) above, “reserved money” means any money which the Residuary Body has set aside to meet—

- (i) expenditure which it has incurred or will incur for the purposes of or in connection with any property, rights or liabilities or related functions which were transferred from the relevant authority to the Residuary Body by a relevant instrument; or
- (ii) payments to be made in connection with any transfers pursuant to article 15(1) (including the costs of such transfers).

(4) For the purpose of any payment under paragraph (1) above—

- (a) the appropriate proportion in relation to any successor authority in relation to a relevant authority is the proportion equal to the proportion which the population of the relevant area in relation to that authority bears to the total of the populations of the relevant areas in relation to all such successor authorities; and
- (b) the population of a relevant area shall be taken to be the number estimated by the Registrar General by reference to the latest date in respect of which such an estimate is available.

### **Borrowing**

**26.**—(1) Subject to any directions given by the Secretary of State, the Residuary Body may, as part of the proper management of its affairs, borrow money for any purpose relevant to its functions.

(2) All money borrowed by the Residuary Body, together with any interest on that money, shall be charged indifferently on all the revenues of the Residuary Body.

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(8) 1985 c. 6.

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

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## PART VI

### WINDING UP OF RESIDUARY BODY

#### **Scheme for winding up**

**27.** The Secretary of State may require the Residuary Body to submit to him, within such period as he may specify, a scheme for its winding up and the disposal of its property, rights and liabilities and related functions.

Signed by authority of the Secretary of State for the Environment

Department of the Environment  
20th February 1995

*David Curry*  
Minister of State,