



Local Government and Housing Act 1989

1989 CHAPTER 42

PART I

LOCAL AUTHORITY MEMBERS, OFFICERS, STAFF AND COMMITTEES ETC.

Duties of particular officers

4 Designation and reports of head of paid service.

- (1) It shall be the duty of every relevant authority—
 - (a) to designate one of their officers as the head of their paid service; and
 - (b) to provide that officer with such staff, accommodation and other resources as are, in his opinion, sufficient to allow his duties under this section to be performed.
- (2) It shall be the duty of the head of a relevant authority's paid service, where he considers it appropriate to do so in respect of any proposals of his with respect to any of the matters specified in subsection (3) below, to prepare a report to the authority setting out his proposals.
- (3) Those matters are—
 - (a) the manner in which the discharge by the authority of their different functions is co-ordinated;
 - (b) the number and grades of staff required by the authority for the discharge of their functions;
 - (c) the organisation of the authority's staff; and
 - (d) the appointment and proper management of the authority's staff.
- (4) It shall be the duty of the head of a relevant authority's paid service, as soon as practicable after he has prepared a report under this section, to arrange for a copy of it to be sent to each member of the authority.
- (5) It shall be the duty of a relevant authority to consider any report under this section by the head of their paid service at a meeting held not more than three months after copies

Status: Point in time view as at 11/07/2001.

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of the report are first sent to members of the authority; and nothing in section 101 of the ^{M1}Local Government Act 1972 or in section 56 of [^{F1}, or Schedule 10 or 20 to,] the ^{M2}Local Government (Scotland) Act 1973 (delegation) shall apply to the duty imposed by virtue of this subsection.

- (6) In this section “relevant authority”—
- (a) in relation to England and Wales, means a local authority of any of the descriptions specified in paragraphs (a) to (e) of section 21(1) below; and
 - (b) in relation to Scotland, [^{F2}council constituted under section 2 of the Local Government etc. (Scotland) Act 1994].
- (7) This section shall come into force at the expiry of the period of two months beginning on the day this Act is passed.

Textual Amendments

- F1** Words in s. 4(5) repealed (S.) (1.4.1996) by 1994 c. 39, s. 180(1)(2), Sch. 13 para. 161(1)(3)(a), **Sch. 14** (with s. 128(8)); S.I. 1996/323, art. 4(1)(c)(d), **Sch. 2**
- F2** Words in s. 4(6)(b) substituted (S.) (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 161(1)(3)(b)** (with s. 128(8)); S.I. 1996/323, **art. 4(1)(c)**

Modifications etc. (not altering text)

- C1** S. 4 extended (E.W.) (19.9.1995) by 1995 c. 25, ss. 63(5), 125(2), **Sch. 7 para. 13(7)(a)** (with ss. 7(6), 115, 117, **Sch. 8 para. 7**)
- S. 4 applied (with modifications) (8.5.2000) by 1999 c. 29, s. 72(1) (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(b), **Sch. Pt. 2**

Marginal Citations

- M1** 1972 c. 70.
- M2** 1973 c. 65.

5 Designation and reports of monitoring officer.

- (1) It shall be the duty of every relevant authority—
- (a) to designate one of their officers (to be known as “the monitoring officer”) as the officer responsible for performing the duties imposed by this section [^{F3}and, where relevant, section 5A below]; and
 - (b) to provide that officer with such staff, accommodation and other resources as are, in his opinion, sufficient to allow those duties [^{F4}and, where relevant, the duties under section 5A below] to be performed;

and the officer so designated may be the head of the authority’s paid service [^{F5}(or, in the case of a police authority established under [^{F6}section 3 of the Police Act 1996][^{F7}or the Metropolitan Police Authority], the clerk to the authority)] but shall not be their chief finance officer.

- (2) [^{F8}Subject to subsection (2B),] it shall be the duty of a relevant authority’s monitoring officer, if it at any time appears to him that any proposal, decision or omission by the authority, by any committee, [^{F9}or sub-committee of the authority, by any person holding any office or employment under the authority] or by any joint committee on which the authority are represented constitutes, has given rise to or is likely to or would give rise to—

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- (a) a contravention by the authority, by any committee, [^{F9}or sub-committee of the authority, by any person holding any office or employment under the authority] or by any such joint committee of any enactment or rule of law or of any code of practice made or approved by or under any enactment; or
- (b) any such maladministration or injustice as is mentioned in Part III of the ^{M3}Local Government Act 1974 (Local Commissioners) or Part II of the ^{M4}Local Government (Scotland) Act 1975 (which makes corresponding provision for Scotland),

to prepare a report to the authority with respect to that proposal, decision or omission.

[^{F10}(2B) Where a relevant authority are operating executive arrangements, the monitoring officer of the relevant authority shall not make a report under subsection (2) in respect of any proposal, decision or omission unless it is a proposal, decision or omission made otherwise than by or on behalf of the relevant authority's executive.]

- (3) It shall be the duty of a relevant authority's monitoring officer—
 - (a) in preparing a report under this section to consult so far as practicable with the [^{F11}person who is for the time being designated as the head of the authority's paid service under section 4 above] and with their chief finance officer; and
 - (b) as soon as practicable after such a report has been prepared by him or his deputy, to arrange for a copy of it to be sent to each member of the authority [^{F12}and, in a case where the relevant authority have a mayor and council manager executive, to the council manager of the authority].
- (4) The references in subsection (2) above, in relation to a relevant authority in England and Wales, to a committee or sub-committee of the authority and to a joint committee on which they are represented shall be taken to include references to any of the following, that is to say—
 - ^{F13}(a)
 - (b) any local fisheries committee the members of which include persons so appointed;
 - ^{F14}(c)
 - (d) any sub-committee appointed by a committee falling within paragraphs (a) to (c) above;

but in relation to any such committee or sub-committee the reference in subsection (3) (b) above to each member of the authority shall have effect as a reference to each member of the committee or, as the case may be, of the committee which appointed the sub-committee.

- (5) It shall be the duty of a relevant authority and of any such committee as is mentioned in subsection (4) above—
 - (a) to consider any report under this section by a monitoring officer or his deputy at a meeting held not more than twenty-one days after copies of the report are first sent to members of the authority or committee; and
 - (b) without prejudice to any duty imposed by virtue of section 115 of the ^{M5}Local Government Finance Act 1988 (duties in respect of conduct involving contraventions of financial obligations) or otherwise, to ensure that no step is taken for giving effect to any proposal or decision to which such a report relates at any time while the implementation of the proposal or decision is suspended in consequence of the report;

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and nothing in section 101 of the ^{M6}Local Government Act 1972 or in section 56 of ^{F15}... the ^{M7}Local Government (Scotland) Act 1973 (delegation) shall apply to the duty imposed by virtue of paragraph (a) above.

- (6) For the purposes of paragraph (b) of subsection (5) above the implementation of a proposal or decision to which a report under this section relates shall be suspended in consequence of the report until the end of the first business day after the day on which consideration of that report under paragraph (a) of that subsection is concluded.
- (7) The duties of a relevant authority’s monitoring officer under this section shall be performed by him personally or, where he is unable to act owing to absence or illness, personally by such member of his staff as he has for the time being nominated as his deputy for the purposes of this section.
- (8) In this section [^{F16}and in section 5A]—
- “business day”, in relation to a relevant authority, means any day which is not a Saturday or Sunday, Christmas Day, Good Friday or any day which is a bank holiday under the ^{M8}Banking and Financial Dealings Act 1971 in the part of Great Britain where the area of the authority is situated;
- “chief finance officer”, in relation to a relevant authority, means the officer having responsibility, for the purposes of section 151 of the Local Government Act 1972, section 73 of the ^{M9}Local Government Act 1985, section 112 of the Local Government Finance Act 1988 [^{F17}, section 127(2) of the Greater London Authority Act 1999] or section 6 below or for the purposes of section 95 of the Local Government (Scotland) Act 1973, for the administration of the authority’s financial affairs; and
- “relevant authority”—
- (a) in relation to England and Wales, means a local authority of any of the descriptions specified in paragraphs (a) to (j) of section 21(1) below; and
- (b) in relation to Scotland, means a local authority.
- (9) This section shall come into force at the expiry of the period of two months beginning on the day this Act is passed.

Textual Amendments

- F3** Words in s. 5(1)(a) inserted (E.) (11.7.2001) by S.I. 2001/2237, **arts. 2(I), 23(1)(a)**
- F4** Words in s. 5(1)(b) inserted (E.) (11.7.2001) by S.I. 2001/2237, **arts. 2(I), 23(1)(b)**
- F5** Words in s. 5(1)(b) inserted (1.10.1994 for specified purposes otherwise 1.4.1995) by 1994 c. 29, s. 43, **Sch. 4 Pt. I para. 35(a)**; S.I. 1994/2025, **art. 6**; S.I. 1994/3262, **art. 4, Sch.** (subject to art. 5)
- F6** Words in s. 5(1) substituted (22.8.1996) by 1996 c. 16, ss. 103(1), 104(1), **Sch. 7 Pt. I para. 1(1)(2) (zd)**
- F7** Words in s. 5(1) inserted (for certain purposes on the “operative date” (as defined in art. 1(2)(c) of S.I. 2000/1095) and on 3.7.2000 for all other purposes) by 1999 c. 29, s. 325, **Sch. 27 para. 62** (with Sch. 12 para. 9(1)); S.I. 2000/1095, **art. 4(2)(c)**
- F8** Words in s. 5(2) inserted (E.) (11.7.2001) by S.I. 2001/2237, **arts. 2(I), 23(1)(c)**
- F9** Words in s. 5(2) substituted (1.10.1994 for specified purposes otherwise 1.4.1995) by 1994 c. 29, s. 43, **Sch. 4 Pt. I para. 35(b)**; S.I. 1994/2025, **art. 6**; S.I. 1994/3262, **art. 4, Sch.** (subject to art. 5)
- F10** S. 5(2B) inserted (E.) (11.7.2001) by S.I. 2001/2237, **arts. 2(I), 23(1)(d)**
- F11** Words in s. 5(3)(a) substituted (1.10.1994 for specified purposes otherwise 1.4.1995) by 1994 c. 29, s. 43, **Sch. 4 Pt. I para. 35(c)**; S.I. 1994/2025, **art. 6**; S.I. 1994/3262, **art. 4, Sch.** (subject to art. 5)
- F12** Words in s. 5(3)(b) inserted (E.) (11.7.2001) by S.I. 2001/2237, **arts. 2(I), 23(1)(e)**

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- F13** S. 5(4)(a) repealed (1.4.1995) by 1994 c. 29, s. 93, **Sch. 9 Pt. I**; S.I. 1994/3262, art. 4, **Sch.** (subject to art. 5)
- F14** S. 5(4)(c) repealed (1.4.1997) by 1995 c. 25, s. 120(3), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/2560, art. 2, **Sch.**
- F15** Words in s. 5(5) repealed (1.4.1996) by 1994 c. 39, s. 180(1)(2), Sch. 13 para. 161(1)(4), **Sch. 14** (with s. 128(8)); S.I. 1996/323, art. 4(1)(c)(d), **Sch. 2**
- F16** Words in s. 5(8) inserted (E.) (11.7.2001) by S.I. 2001/2237, **arts. 2(1), 23(1)(f)**
- F17** S. 5(8): words in the definition of “chief finance officer inserted (8.5.2000 for specified purposes otherwise 3.7.2000) by 1999 c. 29, s. 132(1)(2) (with Sch. 12 para. 9(1)); S.I. 1999/3434, **arts. 3, 4**”

Modifications etc. (not altering text)

- C2** S. 5 extended (E.W.) (19.9.1995) by 1995 c. 25, ss. 63(5), 125(2), **Sch. 7 para. 13(7)(b)** (with ss. 7(6), 115, 117, Sch. 8 para. 7)
- C3** S. 5 applied (with modifications) (23.11.1995) by S.I. 1995/2803, art. 19(1), **Sch. 6 para. 7(3)**
- C4** S. 5 applied (with modifications) (8.5.2000) by 1999 c. 29, s. 73 (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(b), **Sch. Pt. 2** (as amended (27.5.2000) by S.I. 2000/1435, art. 2, **Sch. 1 Pt. I para. 5** and amended (E.W.) (28.7.2001) by 2000 c. 22, ss. 107, 108(4), Sch. 5 para. 24(5), **Sch. 6**)
- C5** S. 5 extended (with modifications) (8.9.2000) by 2000 asp 10, s. 36, **Sch. 5 para. 15** (with s. 32); S.S.I. 2000/312, **art. 2**
- C6** S. 5(1) applied (10.5.2000) by S.I. 2000/1095, **art. 6(5)(a)**

Marginal Citations

- M3** 1974 c. 7.
M4 1975 c. 30.
M5 1988 c. 41.
M6 1972 c. 70.
M7 1973 c. 65.
M8 1971 c. 80.
M9 1985 c. 51.

[^{F18}5A Reports of monitoring officer—local authorities operating executive arrangements

- (1) Where a relevant authority are operating executive arrangements, the monitoring officer of that authority shall be responsible for performing the duties imposed by this section.
- (2) It shall be the duty of the monitoring officer of a relevant authority that is referred to in subsection (1) above, if at any time it appears to him that any proposal, decision or omission, in the course of the discharge of functions of the relevant authority, by or on behalf of the relevant authority’s executive, constitutes, has given rise to or is likely to or would give rise to any of the events referred to in subsection (3), to prepare a report to the executive of the authority with respect to that proposal, decision or omission.
- (3) The events referred to for the purposes of subsection (2) are—
 - (a) a contravention, by the relevant authority’s executive or any person on behalf of the executive, of any enactment or rule of law; or
 - (b) any such maladministration or injustice as is mentioned in Part III of the Local Government Act 1974 ^{F19} (Local Commissioners).
- (4) No duty shall arise by virtue of subsection (3)(b) above unless a Local Commissioner (within the meaning of the Local Government Act 1974) has conducted an

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investigation under Part III of that Act in relation to the proposal, decision or omission concerned.

- (5) It shall be the duty of an authority's monitoring officer—
- (a) in preparing a report under subsection (2) to consult so far as practicable with the person who is for the time being designated as the head of the authority's paid service under section 4 above and with their chief finance officer; and
 - (b) as soon as practicable after such a report has been prepared by him or his deputy, to arrange for a copy of it to be sent to each member of the authority and, where the authority has a mayor and council manager executive, the council manager.
- (6) It shall be the duty of the authority's executive—
- (a) to consider any report under this section by a monitoring officer or his deputy at a meeting held not more than twenty-one days after copies of the report are first sent to members of the executive; and
 - (b) without prejudice to any duty imposed by virtue of section 115B of the Local Government Finance Act 1988 (duties of executive as regards reports) or otherwise, to ensure that no step is taken for giving effect to any proposal or decision to which such a report relates at any time while the implementation of the proposal or decision is suspended in consequence of the report.
- (7) For the purposes of paragraph (b) of subsection (6) above the implementation of a proposal or decision to which a report under this section, by a monitoring officer or his deputy, relates shall be suspended in consequence of the report until the end of the first business day after the day on which consideration of that report under paragraph (a) of that subsection is concluded.
- (8) As soon as practicable after the executive has concluded its consideration of the report of the monitoring officer or his deputy, the executive shall prepare a report which specifies—
- (a) what action (if any) the executive has taken in response to the report of the monitoring officer or his deputy;
 - (b) what action (if any) the executive proposes to take in response to that report and when it proposes to take that action; and
 - (c) the reasons for taking the action specified in the executive's report or, as the case may be, for taking no action.
- (9) As soon as practicable after the executive has prepared a report under subsection (8), the executive shall arrange for a copy of it to be sent to each member of the authority and the authority's monitoring officer.
- (10) The duties of an authority's monitoring officer under this section shall be performed by him personally or, where he is unable to act owing to absence or illness, personally by such member of his staff as he has for the time being nominated as his deputy for the purposes of this section.]

Textual Amendments

- F18** S. 5A inserted (E.) (11.7.2001) and (W.) (1.4.2002) by S.I. 2001/3327, arts. 1(2), 23(2); S.I. 2002/808, arts. 1(2), 22(2)
- F19** 1974 c.7.

Status: Point in time view as at 11/07/2001.

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6 Officer responsible for financial administration of certain authorities.

- (1) On and after the commencement day the Common Council shall—
 - (a) make arrangements for the proper administration of such of its financial affairs as relate to it in its capacity as a local authority, police authority or port health authority, and
 - (b) secure that one of its officers has responsibility for the administration of those affairs.
- (2) Section 17 of the ^{M10}City of London Sewers Act 1897 (functions of the chamberlain of the City of London as regards financial affairs) shall cease to have effect on the commencement day.
- (3) On and after the commencement day the person having responsibility for the administration of certain of the financial affairs of the Common Council under subsection (1) above shall—
 - (a) be a member of one or more of the bodies specified in subsection (5) below; or
 - (b) be the person who immediately before that day was the chamberlain of the City of London; or
 - (c) be a person who qualifies by virtue of section 113(2)(b) of the ^{M11}Local Government Finance Act 1988 (existing office holders) as a person who may be given responsibility for the financial affairs of an authority mentioned in section 111(2)(a) to (k) of that Act; or
 - (d) fulfil two or more of those conditions.
- (4) On and after the commencement day the person having responsibility for the administration of the financial affairs of a new successor body under section 73 of the ^{M12}Local Government Act 1985 shall—
 - (a) be a member of one or more of the bodies specified in subsection (5) below; or
 - (b) be the person who immediately before that day had responsibility for the administration of the financial affairs of the body concerned under the said section 73; or
 - (c) be a person who qualifies by virtue of section 113(2)(b) of the Local Government Finance Act 1988 (existing office holders) as a person who may be given responsibility for the financial affairs of an authority mentioned in section 111(2)(a) to (k) of that Act; or
 - (d) fulfil two or more of those conditions.
- (5) The bodies referred to in subsections (3)(a) and (4)(a) above are—
 - (a) the Institute of Chartered Accountants in England and Wales;
 - (b) the Institute of Chartered Accountants of Scotland;
 - (c) the Chartered Association of Certified Accountants;
 - (d) the Chartered Institute of Public Finance and Accountancy;
 - (e) the Institute of Chartered Accountants in Ireland;
 - (f) the Chartered Institute of Management Accountants;
 - (g) 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.
- (6) The Secretary of State may make regulations containing, as regards the Common Council and any new successor body to which section 73 of the ^{M13}Local Government Act 1985 applies, provisions equivalent to sections 114 to 116 of the ^{M14}Local Government Finance Act 1988 (reports etc.) subject to—

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- (a) modifications to confine the provisions to the Common Council in its capacity as a local authority, police authority or port health authority; and
- (b) any other modifications the Secretary of State thinks fit;

and any such regulations may contain such incidental provision and such supplemental, consequential and transitional provision in connection with their other provisions as the Secretary of State considers appropriate.

(7) In this section—

“the commencement day” means the day on which this section comes into force;

“the Common Council” means the Common Council of the City of London;

“new successor body” means a body corporate established at any time by an order under section 67(3) of the Local Government Act 1985 (new body succeeding to residuary body’s functions).

(8) This section shall come into force at the expiry of the period of two months beginning on the day this Act is passed.

Marginal Citations

M10 1897 c. cxxxiii.

M11 1988c. 41.

M12 1985 c. 51.

M13 1985c. 51.

M14 1988 c. 41.

Status:

Point in time view as at 11/07/2001.

Changes to legislation:

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