Local Government and Housing Act 1989

1989 CHAPTER 42

PART II

LOCAL GOVERNMENT ADMINISTRATION

22 Advisory Commissioners.

(1) Section 23 of the [M1]Local Government Act 1974 (constitution and functions of Commissions for Local Administration) shall have effect with the amendments specified in subsections (2) to (4) below.

(2) In subsection (1), at the end, there shall be added the words " but each of the Commissions may include persons appointed to act as advisers, not exceeding the number appointed to conduct investigations." "

(3) In subsection (3), after the words "Parliamentary Commissioner" there shall be inserted the words " or an advisory member" ".

(4) In subsections (4), (5) and (6) the word "Local" shall be omitted.

(5) In Schedule 4 to the said Act, in paragraph 3 (remuneration), at the end there shall be inserted the following sub-paragraph–

"(3) Sub-paragraphs (1) and (2) above apply in relation to Commissioners who are advisory members of the Commission as they apply in relation to Local Commissioners."

Marginal Citations

M1 1974 c. 7.

Changes to legislation: *Local Government and Housing Act 1989, Part II is up to date with all changes known to be in force on or before 23 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

23 Advice and guidance by Commissions for Local Administration and ScottishCommissioner.

(1) In section 23 of the Local Government Act 1974 (appointment and functions of Commissions for Local Administration) there shall be inserted, after subsection (12), the following subsections—

"(12A) Each of the Commissions may, after consultation with the representative persons and authorities concerned, provide to the authorities or any of the authorities to which this Part of this Act applies such advice and guidance about good administrative practice as appears to the Commission to be appropriate and may arrange for it to be published for the information of the public.

(12B) The representative persons and authorities concerned are—

(a) for the purposes of subsection (12) above, such persons appearing to the Commission to represent authorities in England or, as the case may be,authorities in Wales to which this Part of this Act applies, and in the case of such authorities as are not so represented, those authorities; and

(b) for the purposes of subsection (12A) above, such of those persons and authorities as the Commission think appropriate."

[[F1](2) In section 21 of the [M2]Local Government (Scotland) Act 1975 (appointment and functions of Commissioner for Local Administration in Scotland) there shall be inserted, after subsection (4), the following subsection—

"(4A) The Commissioner may, after consultation with such associations of local authorities as appear to him to be appropriate, provide to the authorities to which this Part of this Act applies such advice and guidance about good administrative practice as appears to him to be appropriate and may arrange for it to be published for the information of the public."**]**

Textual Amendments

F1 S. 23(2) repealed (S.) (23.10.2002) by Scottish Public Services Ombudsman Act 2002 (asp 11), s. 25, **Sch. 6 para. 13(a)**; S.S.I. 2002/467, **art. 2**

Marginal Citations

M2 1975 c. 30.

24 Expenses of Commissions for Local Administration.

[F2](1) . . . . . .

(2) Anything done before the passing of this Act which corresponds to a thing authorised or required to be done by any provision of the paragraphs 6(2) and (3), 7 and 8 substituted by subsection (1) above and done for the purposes ofsections 78 and 79 of the [M3]Local Government Finance Act 1988 shall be treated as validly done under that provision and those sections shall have effect accordingly.

(3) The foregoing provisions shall have effect for the financial years beginning on or after 1st April 1990.

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Textual Amendments

F2 S. 24(1) repealed (1.4.2008) by Local Government and Public Involvement in Health Act 2007 (c. 28), s. 245(5), **Sch. 18 Pt. 14**; S.I. 2008/917, art. 2(v)(ii)

Marginal Citations

M3 1988 c. 41.

25 Annual reports of Commissions: new provisions.

(1) The representative body for England and the representative body for Wales designated under section 24 of the [M4]Local Government Act 1974 are hereby dissolved and accordingly that section shall cease to have effect.

(2) After section 23 of that Act there shall be inserted the following section—

"23A Annual reports for representatives etc.

(1) For the financial year ending in 1990 and for each subsequent financial year, each of the Commissions shall prepare a general report on the discharge of their functions and shall submit it—

(a) to such persons as appear to the Commission to represent authorities in England or, as the case may be, authorities in Wales to which this Part of this Act applies, and

(b) in the case of such authorities as are not so represented, to those authorities.

(2) The report shall be submitted as soon as may be after the Commission have received the reports for the year from Local Commissioners under section 23(11) above, and each Commission shall submit copies of those reports, together with their own report.

(3) Each Commission shall arrange for the publication of the report submitted by them under subsection (1) above and of the reports of which copies are submitted by them under subsection (2) above.

(4) Before arranging for the publication of a report under subsection (3) above the Commission concerned shall give a reasonable opportunity for the representative persons and authorities to whom the report was submitted to comment on it.

(5) Without prejudice to the generality of subsection (4) above, comments made by the representative persons and authorities by virtue of that subsection may relate to particular classes of authorities to which this Part of this Act applies.

(6) Where the Commission for Local Administration in Wales consist of only one Local Commissioner, section 23(11) above and subsection (2) above shall have effect with the necessary modifications."

Marginal Citations

M4 1974 c. 7.

Changes to legislation: *Local Government and Housing Act 1989, Part II is up to date with all changes known to be in force on or before 23 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

26 Implementation of recommendations of Commissioners for Local Administration in England and Wales.

(1) In section 31 of the Local Government Act 1974 (action to be taken in relation to adverse reports), the following subsections shall be substituted for subsections (1) to (2A)—

"(1) This section applies where a Local Commissioner reports that injustice has been caused to a person aggrieved in consequence of maladministration.

(2) The report shall be laid before the authority concerned and it shall be the duty of that authority to consider the report and, within the period of three months beginning with the date on which they received the report, or such longer period as the Local Commissioner may agree in writing, to notify the Local Commissioner of the action which the authority have taken or propose to take.

(2A) If the Local Commissioner—

(a) does not receive the notification required by subsection (2) above within the period allowed by or under that subsection, or

(b) is not satisfied with the action which the authority concerned have taken or propose to take, or

(c) does not within a period of three months beginning with the end of the period so allowed, or such longer period as the Local Commissioner may agree in writing, receive confirmation from the authority concerned that they have taken action, as proposed, to the satisfaction of the Local Commissioner,

he shall make a further report setting out those facts and making recommendations.

(2B) Those recommendations are such recommendations as the Local Commissioner thinks fit to make with respect to action which, in his opinion, the authority concerned should take to remedy the injustice to the person aggrieved and to prevent similar injustice being caused in the future.

(2C) Section 30 above, with any necessary modifications, and subsection (2)above shall apply to a report under subsection (2A) above as they apply to a report under that section.

(2D) If the Local Commissioner—

(a) does not receive the notification required by subsection (2) above as applied by subsection (2C) above within the period allowed by or under that subsection or is satisfied before the period allowed by that subsection has expired that the authority concerned have decided to take no action, or

(b) is not satisfied with the action which the authority concerned have taken or propose to take, or

(c) does not within a period of three months beginning with the end of the period allowed by or under subsection (2) above as applied by subsection (2C) above, or such longer period as the Local Commissioner may agree in writing, receive confirmation from the authority concerned that they have taken action,as proposed, to the satisfaction of the Local Commissioner,

he may, by notice to the authority, require them to arrange for a statement to be published in accordance with subsections (2E) and (2F) below.

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(2E) The statement referred to in subsection (2D) above is a statement, in such form as the authority concerned and the Local Commissioner may agree,consisting of—

(a) details of any action recommended by the Local Commissioner in his furtherreport which the authority have not taken;

(b) such supporting material as the Local Commissioner may require; and

(c) if the authority so require, a statement of the reasons for their having taken no action on, or not the action recommended in, the report.

(2F) The requirements for the publication of the statement are that—

(a) publication shall be in any two editions within a fortnight of a newspaper circulating in the area of the authority agreed with the Local Commissioneror, in default of agreement, nominated by him; and

(b) publication in the first such edition shall be arranged for the earliest practicable date.

(2G) If the authority concerned—

(a) fail to arrange for the publication of the statement in accordance with subsections (2E) and (2F) above, or

(b) are unable, within the period of one month beginning with the date on which they received the notice under subsection (2D) above, or such longer period as the Local Commissioner may agree in writing, to agree with the Local Commissioner the form of the statement to be published,

the Local Commissioner shall arrange for such a statement as is mentioned in subsection (2E) above to be published in any two editions within a fortnight of a newspaper circulating within the authority's area.

(2H) The authority concerned shall reimburse the Commission on demand any reasonable expenses incurred by the Local Commissioner in performing his duty under subsection (2G) above."

(2) This section shall not have effect in relation to a report made before the coming into force of this section.

[[F3]27 Implementation of recommendations of Commissioner for Local Administrationin Scotland.

(1) In section 29 of the [M5]Local Government (Scotland) Act 1975 (action to be taken in relation to adverse reports), the following subsections shall be substituted for subsections (1) to (2A)—

"(1) This section applies where the Commissioner reports that injustice has been caused to a person aggrieved in consequence of maladministration.

[F4]**[** (2) The report shall be laid before the authority concerned and it shall be the duty of that authority to consider the report and, within the period of three months beginning with the date on which they received the report, or such longer period as the Commissioner may agree in writing, to notify the Commissioner of the action which the authority have taken or propose to take.**]]**

(2A) If the Commissioner—

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(a) does not receive the notification required by subsection (2) above within the period allowed by or under that subsection, or

(b) is not satisfied with the action which the authority concerned have take nor propose to take, or

(c) does not within a period of three months beginning with the end of the period so allowed, or such longer period as the Commissioner may agree in writing, receive confirmation from the authority concerned that they have taken action, as proposed, to the satisfaction of the Commissioner,

he shall make a further report setting out those facts and making recommendations.

(2B) Those recommendations are such recommendations as the Commissioner thinks fit to make with respect to the action which, in his opinion, the authority concerned should take to remedy the injustice to the person aggrieved and to prevent similar injustice being caused in the future.

(2C) Section 28 of this Act, with any necessary modifications, and subsection (2) above shall apply to a report under subsection (2A) above as they apply to a report under that section.

(2D) If the Commissioner—

(a) does not receive the notification required by subsection (2) above as applied by subsection (2C) above within the period allowed by or under that subsection or is satisfied before the period allowed by that subsection has expired that the authority concerned have decided to take no action; or

(b) is not satisfied with the action which the authority concerned have taken or propose to take; or

(c) does not within a period of three months beginning with the end of the period allowed by or under subsection (2) above as applied by subsection (2C) above, or such longer period as the Commissioner may agree in writing, receive confirmation from the authority concerned that they have taken action, as proposed, to the satisfaction of the Commissioner,

he may, by notice to the authority, require them to arrange for astatement to be published in accordance with subsections (2E) and (2F) below.

(2E) The statement referred to in subsection (2D) above is a statement, in such form as the authority concerned and the Commissioner may agree, consisting of—

(a) details of any action recommended by the Commissioner in his further report which the authority have not taken;

(b) such supporting material as the Commissioner may require; and

(c) if the authority so require, a statement of the reasons for their having taken no action on, or not the action recommended in, the report.

(2F) The requirements for the publication of the statement are that—

(a) publication shall be in any two editions within a fortnight of a newspaper circulating in the area of the authority agreed with the Commissioner or, indefault of agreement, nominated by him; and

(b) publication in the first such edition shall be arranged for the earliest practicable date.

(2G) If the authority concerned—

(a) fail to arrange for the publication of the statement in accordance withsubsections (2E) and (2F) above, or

(b) are unable, within the period of one month beginning with the date on which they received the notice under subsection (2D) above, or such longer period as the Commissioner may agree in writing, to agree with the Commissioner the form of the statement to be published,

the Commissioner shall arrange for such a statement as is mentioned insubsection (2E) above to be published in any two editions within a fortnight of a newspaper circulating within the authority's area.

(2H) The authority concerned shall reimburse the Commissioner on demand any reasonable expenses incurred by the Commissioner in performing his duty under subsection (2G) above."

(2) In section 32 of the [M6]Local Government (Scotland) Act 1975 (interpretation of provisions about investigations by the Commissioner) the following subsection shall be inserted after subsection (2)—

"(2A) Except in the case of a joint board or joint committee, references in this Part of this Act to the authority concerned are, in relation to action taken by or on behalf of an authority to whom this Part of this Act applies (whether by virtue of subsection (1) or (2) of section 23 of this Act), references to that authority."

(3) This section shall not have effect in relation to a report made before the coming into force of this section.

Textual Amendments

F3 S. 27 repealed (S.) (23.10.2002) by Scottish Public Services Ombudsman Act 2002 (asp 11), s. 25, **Sch. 6 para. 13(b)**; S.S.I. 2002/467, **art. 2**

F4 S. 27(2) repealed (S.) (21.5.1997) by 1997 c. 35, ss. 10, 11(2), **Sch.**

Marginal Citations

M5 1975 c. 30.

M6 1975 c. 30.

28 Consideration of adverse reports: England and Wales.

(1) The following section shall be inserted after section 31 of the [M7]Local Government Act 1974—

"**31A Consideration of adverse reports.**

(1) Subject to subsection (3) below, any power of an authority to have their functions discharged by any person or body of persons acting for the authority shall, as respects the consideration of a further report of the Local Commissioner under section 31(2A) above, be subject to the restriction that, if it is proposed that the authority should take no action on, or not the action recommended in, the report, consideration of the report shall be referred to the authority.

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(2) Consideration of a further report of the Local Commissioner under section 31(2A) above by any such committee of a local authority as is referred to in an enactment specified in section 101(9) of the Local Government Act 1972 or by any appeal committee constituted in accordance with paragraph 1 of Schedule 2 to the Education Act 1980 shall be subject to a corresponding restriction.

(3) The restriction imposed by subsections (1) and (2) above does not apply where the report recommends action to be taken by—

(a) a joint committee established under the said section 101, or

(b) any committee referred to in an enactment specified in paragraph (c), (d) or (h) of the said section 101(9).

(4) If an authority considering a further report of the Local Commissioner under section 31(2A) above take into consideration a report by a person or body with an interest in the Local Commissioner's report, they shall not conclude their consideration of the Local Commissioner's report without also having taken into consideration a report by a person or body with no interest in the Local Commissioner's report.

(5) No member of an authority to which this Part of this Act applies or of a committee mentioned in subsection (2) or (3) above shall vote on any question with respect to a report or further report under this Part of this Act in which he is named and criticised by a Local Commissioner.

(6) Section 25(4) and (5) above do not apply to this section."

(2) This section shall not have effect in relation to a report made before the coming into force of section 26 above.

Marginal Citations

M7 1974c. 7.

[[F5]29 Consideration of adverse reports: Scotland.

(1) The following section shall be inserted after section 29 of the [M8]Local Government (Scotland) Act 1975—

" **Consideration of adverse reports.**

(1) Subject to subsection (3) below, any power of an authority to have their functions discharged by any person or body of persons acting for the authority shall, as respects the consideration of a further report of the Commissioner under section 29(2A) of this Act, be subject to the restriction that, if it is proposed to take no action on, or not the action recommended in, there port, consideration of the report shall be referred to the authority.

(2) Consideration of a further report of the Commissioner under section 29(2A)of this Act by—

(a) any such committee as is mentioned in section 23(2) of this Act; or

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(b) an education committee appointed under section 124 of the Act of 1973;

shall be subject to a corresponding restriction.

(3) The restriction imposed by subsections (1) and (2) above does not apply where the report recommends action to be taken by a joint committee—

(a) established under section 56 of the Act of 1973 or under paragraph 7 of Schedule 10 or paragraph 6 of Schedule 20 to that Act (local authority, education and social work joint committees); or

(b) referred to in paragraph (a), (b), or (e) of section 23(2) of this Act (fire, police and local government and teachers' superannuation joint committees).

(4) If an authority considering a further report of the Commissioner under section 29(2A) of this Act take into consideration a report by a person or body with an interest in the Commissioner's report, they shall not conclude their consideration of the Commissioner's report without also having taken into consideration a report by a person or body with no interest in the Commissioner's report.

(5) No member of an authority to which this Part of this Act applies or of a committee mentioned in subsection (2) or (3) above shall vote on any question with respect to a report or further report under this Part of this Act in which he is named and criticised by the Commissioner."

(2) This section shall not have effect in relation to a report made before the coming into force of section 27 above.**]**

Textual Amendments

F5 S. 29 repealed (S.) (23.10.2002) by Scottish Public Services Ombudsman Act 2002 (asp 11), s. 25, **Sch. 6 para. 13(c)**; S.S.I. 2002/467, **art. 2**

Marginal Citations

M8 1975c. 30.

30 Declaration of acceptance of office of councillor etc.

(1) Before section 34 of the [M9]Local Government (Scotland) Act 1973 there shall be inserted the following section—

" Acceptance of Office

33A Declaration of acceptance of office of councillor.

(1) A person elected to office as a councillor of a local authority shall not, unless—

(a) he has made a declaration of acceptance of office in a form prescribed by an order made by the Secretary of State; and

(b) the declaration has within two months from the day of the election been delivered to the proper officer of the local authority,

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act in the office except for the purpose of taking such a declaration.

(2) If such a declaration is not made and delivered to the proper officer within the appointed time, the office of the person elected shall at the expiration of that time become vacant.

(3) The declaration shall be made before either—

(a) two members of the local authority to which the declarant is elected; or

(b) the proper officer of the local authority; or

(c) the sheriff; or

(d) a justice of the peace.

(4) Any person before whom a declaration is authorised to be made under this section may take the declaration."

(2) In section 83 of the [M10]Local Government Act 1972 (declaration of acceptance of office) in subsection (1) and subsection (4), for the words "rules under section 42 above" there shall be substituted the words " an order made by the Secretary of State ".

Marginal Citations

M9 1973 c. 65.

M10 1972 c. 70.

[F6]31 National Code of Local Government Conduct.

. . . . . .

Textual Amendments

F6 S. 31 repealed (S.) (1.5.2003) by Local Government in Scotland Act 2003 (asp 1), **ss. 60(1)(g)**, 62(2); S.S.I. 2003/134, art. 2(2) and (E.W.) (22.5.2012) by Local Government Act 2000 (c. 22), s. 108(3)(b)(c), Sch. 5 para. 26, **Sch. 6**; S.I. 2012/1358, art. 2

32 Anonymity in reports on investigations.

[F7](1) . . . . . .

[F8](2) . . . . . .

Textual Amendments

F7 S. 32(1) repealed (E.W.) (22.5.2012) by Local Government Act 2000 (c. 22), s. 108(3)(b)(c), Sch. 5 para. 26, **Sch. 6**; S.I. 2012/1358, art. 2

F8 S. 32(2) repealed (S.) (1.5.2003) by Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7), s. 37(2), **sch. 4** (with s. 31); S.S.I. 2003/74, art. 2(2)(e)

Changes to legislation:
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View outstanding changes

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:
Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 65(2)(b)(ii) inserted by 2004 c. 23 Sch. 2 para. 11 (Pt. IV repealed (18.11.2003 for E. for the repeal of ss. 45, 53, 27.11.2003 for W. for the purpose of and in relation to financial years beginning on or after 1st April 2004, and 1.4.2004 for E. in so far as not already in force) by Local Government Act 2003 (c. 26), s. 128(6), Sch. 7 para. 29; S.I. 2003/2938, arts. 3(h), 7(b) (with art. 8, Sch.); S.I. 2003/3034, art. 2, Sch. 1 Pt. I (with Sch. 2 para. 2))
- s. 76A76B inserted by 2014 c. 29 s. 24(2)
- s. 87(1A) inserted by 2014 c. 29 s. 24(5)