



# Local Government and Housing Act 1989

## 1989 CHAPTER 42

### PART I

#### LOCAL AUTHORITY MEMBERS, OFFICERS, STAFF AND COMMITTEES ETC.

##### *Duties of particular officers*

#### **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; and
- (b) to provide that officer with such staff, accommodation and other resources as are, in his opinion, sufficient to allow those duties to be performed;

and the officer so designated may be the head of the authority’s paid service [<sup>F1</sup>(or, in the case of a police authority established under [<sup>F2</sup>section 3 of the Police Act 1996][<sup>F3</sup>or the Metropolitan Police Authority], the clerk to the authority)] but shall not be their chief finance officer.

(2) 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, [<sup>F4</sup>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—

- (a) a contravention by the authority, by any committee, [<sup>F4</sup>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 <sup>M1</sup>Local Government Act 1974 (Local Commissioners) or Part II of the <sup>M2</sup>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.

*Status: Point in time view as at 03/07/2000. This version of this provision has been superseded.*

*Changes to legislation: Local Government and Housing Act 1989, Section 5 is up to date with all changes known to be in force on or before 06 July 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)*

- (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 [<sup>F5</sup>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.
  
- (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—
  - <sup>F6</sup>(a) .....
  - (b) any local fisheries committee the members of which include persons so appointed;
  - <sup>F7</sup>(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 <sup>M3</sup>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;

and nothing in section 101 of the <sup>M4</sup>Local Government Act 1972 or in section 56 of <sup>F8</sup>... the <sup>M5</sup>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—

“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 <sup>M6</sup>Banking and Financial Dealings Act 1971 in the part of Great Britain where the area of the authority is situated;

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“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<sup>M7</sup>Local Government Act 1985, section 112 of the Local Government Finance Act 1988 [<sup>F9</sup>, 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

- F1** 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)
- F2** 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)**
- F3** 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)**
- F4** 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)
- F5** 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)
- F6** 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)
- F7** 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.**
- F8** 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**
- F9** 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)

- C1** 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**)
- C2** S. 5 applied (with modifications) (23.11.1995) by S.I. 1995/2803, **art. 19(1), Sch. 6 para. 7(3)**
- C3** 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**)
- C4** 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**
- C5** S. 5(1) applied (10.5.2000) by S.I. 2000/1095, **art. 6(5)(a)**

#### Marginal Citations

- M1** 1974 c. 7.
- M2** 1975 c. 30.
- M3** 1988 c. 41.

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- M4** 1972 c. 70.
- M5** 1973 c.65.
- M6** 1971 c. 80.
- M7** 1985 c. 51.

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