



# 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 [<sup>F1</sup>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 [<sup>F2</sup>and, where relevant, the duties under section 5A below] to be performed;

and [<sup>F3</sup>subject to subsection (1A) below] the officer so designated may be the head of the authority’s paid service [<sup>F4</sup>(or, in the case of a police authority established under [<sup>F5</sup>section 3 of the Police Act 1996][<sup>F6</sup>or the Metropolitan Police Authority], [<sup>F7</sup>the chief executive of the authority])] but shall not be their chief finance officer.

[<sup>F8</sup>(1A) The officer designated under subsection (1) above by a relevant authority to which this subsection applies may not be the head of that authority’s paid service.

(1B) Subsection (1A) above applies to the following relevant authorities in England and Wales—

- (a) a county council,
- (b) a county borough council,
- (c) a district council,
- (d) a London borough council,
- (e) the Greater London Authority, and
- (f) the Common Council of the City of London in its capacity as a local authority, police authority or port health authority.]

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- (2) [<sup>F9</sup>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, [<sup>F10</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>F10</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 [<sup>F11</sup>or of any code of practice made or approved by or under any enactment]; or
  - [<sup>F12</sup>(aa) any such maladministration or failure as is mentioned in Part 3 of the Local Government Act 1974 (Local Commissioners), or]
  - (b) any such maladministration or injustice as is mentioned in <sup>F13</sup>... Part II of the <sup>M1</sup>Local Government (Scotland) Act 1975 (which makes corresponding provision for Scotland)[<sup>F14</sup>; or
  - (c) a matter which the Public Services Ombudsman for Wales would be entitled to investigate under the Public Services Ombudsman (Wales) Act 2005,]
- to prepare a report to the authority with respect to that proposal, decision or omission.
- [<sup>F15</sup>(2A) No duty shall arise by virtue of subsection (2)(b) above unless a Local Commissioner (within the meaning of the <sup>M2</sup>Local Government Act 1974) has conducted an investigation under Part III of that Act in relation to the proposal, decision or omission concerned.]
- [<sup>F16</sup>(2AA) No duty shall arise by virtue of subsection (2)(c) above unless the Public Services Ombudsman for Wales has conducted an investigation under the Public Services Ombudsman (Wales) Act 2005 in relation to the proposal, decision or omission concerned.]
- [<sup>F17</sup>(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 [<sup>F18</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 [<sup>F19</sup>and, in a case where the relevant authority have a mayor and council manager executive, to the council manager of the authority].
- [<sup>F20</sup>(3A) The references in subsection (2) above, in relation to a relevant authority in England, 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—
- (a) any inshore fisheries and conservation authority (“IFC authority”) the members of which include persons who are members of the relevant authority, and
  - (b) any sub-committee appointed by such an authority;
- but in relation to any such IFC authority or sub-committee the reference in subsection (3)(b) above to each member of the authority shall have effect as a reference

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to each member of the IFC authority or, as the case may be, of the IFC authority which appointed the sub-committee.]

<sup>F21</sup>(4) .....

(5) It shall be the duty of a relevant authority [<sup>F22</sup>and of any IFC authority falling within paragraph (a) of subsection (3A) above][<sup>F23</sup>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 [<sup>F24</sup>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>F25</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.

<sup>F26</sup>(7A) Subsection (7) above shall have effect subject to section 82A of the Local Government Act 2000 (monitoring officers: delegation of functions under Part 3 of that Act).]

(8) In this section [<sup>F27</sup>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 <sup>M6</sup>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 <sup>M7</sup>Local Government Act 1985, section 112 of the Local Government Finance Act 1988 [<sup>F28</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; [<sup>F29</sup>and]

<sup>F30</sup>“inshore fisheries and conservation authority” means the authority for an inshore fisheries and conservation district established under section 149 of the Marine and Coastal Access Act 2009;]

“relevant authority”—

(a) in relation to England and Wales, means a local authority of any of the descriptions specified in paragraphs (a) to [<sup>F31</sup>(k)] of section 21(1) below; and

(b) in relation to Scotland, means a local authority.

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[<sup>F32</sup>(8A) Any reference in this section to the duties of a monitoring officer imposed by this section, or to the duties of a monitoring officer under this section, shall include a reference to the functions which are conferred on a monitoring officer by virtue of Part III of the Local Government Act 2000.]

(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)(a) inserted (E.) (11.7.2001) and (W.) (1.4.2002) by S.I. 2001/2237, arts. 1(2), 23(1)(a); S.I. 2002/808, arts. 1(2), **22(1)(a)**
- F2** Words in s. 5(1)(b) inserted (E.) (11.7.2001) and (W.) (1.4.2002) by S.I. 2001/2237, arts. 1(2), 23(1)(b); S.I. 2002/808, arts. 1(2), **22(1)(b)**
- F3** Words in s. 5(1) inserted (E.W.) (28.7.2001) by 2000 c. 22, ss. 107(1), 108(4), **Sch. 5 para. 24(1)(2)**
- F4** 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)
- F5** 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)**
- F6** 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)**
- F7** Words in s. 5(1) substituted (1.4.2007) by Police and Justice Act 2006 (c. 48), s. 53(1), **Sch. 14 para. 16**; S.I. 2007/709, art. 3(p) (with art. 6)
- F8** S. 5(1A)(1B) inserted (E.W.) (28.7.2001) by 2000 c. 22, ss. 107(1), 108(4), **Sch. 5 para. 24(1)(3)**
- F9** Words in s. 5(2) inserted (E.) (11.7.2001) and (W.) (1.4.2002) by S.I. 2001/2237, arts. 1(2), 23(1)(c); S.I. 2002/808, arts. 1(2), **22(1)(c)**
- F10** 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)
- F11** Words in s. 5(2)(a) repealed (E.W.) (28.7.2001) by 2000 c. 22, ss. 107(1)(2), 108(4), Sch. 5 para. 24(1)(4), **Sch. 6**
- F12** S. 5(2)(aa) inserted (1.4.2008) by Local Government and Public Involvement in Health Act 2007 (c. 28), s. 245(5), **Sch. 12 para. 14(2)(a)**; S.I. 2008/917, art. 2(1)(n) (with art. 6(5))
- F13** Words in s. 5(2)(b) repealed (1.4.2008) by Local Government and Public Involvement in Health Act 2007 (c. 28), s. 245(5), Sch. 12 para. 14(2)(b), **Sch. 18 Pt. 14**; S.I. 2008/917, art. 2(1)(n)(ii)(v) (with art. 6(5))
- F14** S. 5(2)(c) and word inserted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 24(2)**; S.I. 2005/2800, art. 5(1)(3)
- F15** S. 5(2A) inserted (E.W.) (28.7.2001) by 2000 c. 22, ss. 107(1), 108(4), **Sch. 5 para. 24(1)(6)**
- F16** S. 5(2AA) inserted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 24(3)**; S.I. 2005/2800, art. 5(1)(3)
- F17** S. 5(2B) inserted (E.) (11.7.2001) and (W.) (1.4.2002) by S.I. 2001/2237, arts. 1(2), 23(1)(d); S.I. 2002/808, arts. 1(2), **22(1)(d)**
- F18** 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)
- F19** Words in s. 5(3)(b) added (E.) (11.7.2001) and (W.) (1.4.2002) by S.I. 2001/2237, arts. 1(2), 23(1)(e); S.I. 2002/808, arts. 1(2), **22(1)(e)**
- F20** S. 5(3A) inserted (1.10.2010) by Marine and Coastal Access Act 2009 (c. 23), s. 324(3), **Sch. 14 para. 13(2)**; S.I. 2010/2195, art. 3(2)(l)
- F21** S. 5(4) repealed (1.4.2010 for W., 1.4.2011 for E.) by Marine and Coastal Access Act 2009 (c. 23), s. 324(3), **Sch. 22 Pt. 4**; S.I. 2010/630, art. 3(b) (with arts. 8, 12); S.I. 2011/556, art. 2(2)(o) (with art. 2(3))

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- F22** Words in s. 5(5) inserted (1.10.2010) by Marine and Coastal Access Act 2009 (c. 23), s. 324(3), **Sch. 14 para. 13(3)**; S.I. 2010/2195, art. 3(2)(l)
- F23** Words in s. 5(5) repealed (1.4.2010 for W., 1.4.2011 for E.) by Marine and Coastal Access Act 2009 (c. 23), s. 324(3), **Sch. 22 Pt. 4**; S.I. 2010/630, art. 3(b) (with arts. 8, 12); S.I. 2011/556, art. 2(2)(o) (with art. 2(3))
- F24** Words in s. 5(5)(a) repealed (1.4.2010 for W., 1.4.2011 for E.) by Marine and Coastal Access Act 2009 (c. 23), s. 324(3), **Sch. 22 Pt. 4**; S.I. 2010/630, art. 3(b) (with arts. 8, 12); S.I. 2011/556, art. 2(2)(o) (with art. 2(3))
- F25** 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**
- F26** S. 5(7A) inserted (E.W.) (18.11.2003) by Local Government Act 2003 (c. 26), **ss. 113(3)**, 128(2)(d)
- F27** Words in s. 5(8) inserted (E.) (11.7.2001) and (W.) (1.4.2002) by S.I. 2001/2237, arts. 1(2), 23(1)(f); S.I. 2002/808, arts. 1(2), **22(1)(f)**
- F28** 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**
- F29** Word in s. 5(8) repealed (1.4.2010 for W., 1.4.2011 for E.) by Marine and Coastal Access Act 2009 (c. 23), s. 324(3), **Sch. 22 Pt. 4**; S.I. 2010/630, art. 3(b) (with arts. 8, 12); S.I. 2011/556, art. 2(2)(o) (with art. 2(3))
- F30** Words in s. 5(8) inserted (1.10.2010) by Marine and Coastal Access Act 2009 (c. 23), s. 324(3), **Sch. 14 para. 13(4)**; S.I. 2010/2195, art. 3(2)(l)
- F31** S. 5(8): words in para. (a) of the definition of "relevant authority" substituted (E.W.) (28.7.2001) by 2000 c. 22, **ss. 107(1)**, 108(4), **Sch. 5 para. 24(1)(7)**
- F32** S. 5(8A) inserted (E.W.) (28.7.2001) by 2000 c. 22, **ss. 107(1)**, 108(4), **Sch. 5 para. 24(1)(8)**

#### 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**; (E.W.) (28.7.2001) by 2000 c. 22, **ss. 107**, 108(4), **Sch. 5 para. 24(5)**, **Sch. 6**; and (15.1.2012) by Localism Act 2011 (c. 20), s. 240(1)(l), **Sch. 22 para. 49**; and (1.4.2012) by Localism Act 2011 (c. 20), s. 240(2), **Sch. 19 para. 38**; S.I. 2012/628, **art. 6(i)**)
- 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 applied (E.) (22.7.2004) by The Cotswolds Area of Outstanding Natural Beauty (Establishment of Conservation Board) Order 2004 (S.I. 2004/1777), arts. 1, **17(7)**
- C6** S. 5 applied (E.) (22.7.2004) by The Chilterns Area of Outstanding Natural Beauty (Establishment of Conservation Board) Order 2004 (S.I. 2004/1778), arts. 1, **17(7)(b)**
- C7** S. 5 applied (E.) (24.3.2005) by The New Forest National Park Authority (Establishment) Order 2005 (S.I. 2005/421), art. 1, **Sch. 4 para. 9(3)**
- C8** S. 5 applied (E.) (24.3.2010) by The South Downs National Park Authority (Establishment) Order 2010 (S.I. 2010/497), art. 1, **Sch. 4 para. 9(3)**
- C9** S. 5(1) applied (10.5.2000) by S.I. 2000/1095, **art. 6(5)(a)**
- C10** S. 5(2)-(7) applied (with modifications) (E.) (5.3.2008) by The Cheshire (Structural Changes) Order 2008 (S.I. 2008/634), arts. 1, **8(4)**
- C11** S. 5(2)-(7) applied (with modifications) (E.) (28.3.2008) by The Bedfordshire (Structural Changes) Order 2008 (S.I. 2008/907), arts. 1, **17(4)**

#### Marginal Citations

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

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|-----------|-------------|
| <b>M4</b> | 1972 c. 70. |
| <b>M5</b> | 1973 c. 65. |
| <b>M6</b> | 1971 c. 80. |
| <b>M7</b> | 1985 c. 51. |

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