



# Audit Commission Act 1998 (repealed)

## 1998 CHAPTER 18

### PART II

#### ACCOUNTS AND AUDIT OF PUBLIC BODIES

##### *Prevention of unlawful expenditure etc.*

#### **19 Health service bodies: referral to Secretary of State.**

If the auditor for the time being of the accounts of a health service body has reason to believe that the body or an officer of the body—

- (a) is about to make, or has made, a decision which involves or would involve the incurring of expenditure which is unlawful, or
- (b) is about to take, or has taken, a course of action which, if pursued to its conclusion, would be unlawful and likely to cause a loss or deficiency,

he shall refer the matter forthwith to the Secretary of State.

#### **Modifications etc. (not altering text)**

C1 S. 19 excluded (8.5.2000) by 1999 c. 29, s. 134(5) (with Sch. 12 para. 9(1)); S.I. 1999/3434, art. 3

#### **[<sup>F1</sup>19A Other bodies: advisory notices.**

(1) The auditor for the time being of the accounts of a body subject to audit other than a health service body may issue a notice under this section (“an advisory notice”) if he has reason to believe that the body or an officer of the body—

- (a) is about to make or has made a decision which involves or would involve the body incurring expenditure which is unlawful,
- (b) is about to take or has begun to take a course of action which, if pursued to its conclusion, would be unlawful and likely to cause a loss or deficiency, or
- (c) is about to enter an item of account, the entry of which is unlawful.

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*Status: Point in time view as at 31/01/2008.*

*Changes to legislation: There are currently no known outstanding effects for the Audit Commission Act 1998 (repealed), Cross Heading: Prevention of unlawful expenditure etc.. (See end of Document for details)*

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- (2) For the purposes of this section and section 19B the actions of—
- (a) a committee or sub-committee of a body, or
  - (b) any other person (other than an officer) authorised to act on behalf of the body,
- are to be treated as the actions of the body itself.
- (3) An advisory notice is a notice which—
- (a) is addressed to the body or officer concerned,
  - (b) specifies the paragraph of subsection (1) which is relevant and the decision, course of action or item of account to which the notice relates,
  - (c) specifies that the notice will take effect on the day a copy of the notice is served on the person to whom it is addressed, and
  - (d) requires the body or officer before—
    - (i) making or implementing the decision,
    - (ii) taking or continuing to take the course of action, or
    - (iii) entering the item of account,(as the case may be) to give the person who is for the time being the auditor of the accounts of the body not less than the specified number of days' notice in writing of the intention of the body or officer to do that thing,

and in paragraph (d) the reference to the specified number is to such number not exceeding 21 as is specified in the notice.

(4) Where two or more auditors are appointed in relation to the accounts of any body—

    - (a) the power to issue an advisory notice may be exercised by the auditors acting jointly or by such one of them as they may determine, and
    - (b) in relation to such a notice, references in subsections (5) and (6) to the auditor are references to the auditor or auditors by whom the notice is issued.

(5) A copy of an advisory notice—

    - (a) shall be served on the body to which, or to an officer of which, it is addressed,
    - (b) in the case of a notice addressed to an officer, shall also be served on him, and
    - (c) may be served on such other person or persons as the auditor considers appropriate.

(6) The auditor shall serve a statement of his reasons for the belief referred to in subsection (1) on the body concerned, and on any officer on whom a copy of the notice was served under subsection (5)(b), before the end of the period of 7 days beginning on the day on which a copy of the notice was served on the person to whom it is addressed.

(7) Where this section requires any document to be served on an officer of a body, it shall be served on him by addressing it to him and delivering it to him or leaving it at, or sending it by post to, the office at which he is employed.

(8) An advisory notice may at any time be withdrawn by the person who is for the time being the auditor in relation to the accounts of the body to which, or to an officer of which, the notice was addressed, and the auditor shall give notice in writing of the withdrawal to any body or person on whom a copy of the advisory notice was served under subsection (5).]

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*Changes to legislation: There are currently no known outstanding effects for the Audit Commission Act 1998 (repealed), Cross Heading: Prevention of unlawful expenditure etc.. (See end of Document for details)*

### Textual Amendments

**F1** S. 19A inserted (19.12.2000 (E.) and for specified purposes (W.) and otherwise *prosp.*) by 2000 c. 22, ss. 91(1), 108(3); S.I. 2000/3335, art. 2

### [<sup>F2</sup>19B Effect of an advisory notice.

- (1) While an advisory notice has effect, it is not lawful for the body concerned or any officer of that body—
  - (a) where the notice relates to a decision, to make or implement the decision,
  - (b) where the notice relates to a course of action, to take or continue to take the course of action, or
  - (c) where the notice relates to an item of account, to enter the item of account, unless and until the conditions set out in subsection (2) are satisfied.
- (2) The conditions are—
  - (a) that the body has considered, in the light of the advisory notice and the statement under section 19A(6), the consequences of doing the thing mentioned in the paragraph of subsection (1) which is relevant,
  - (b) that the body or officer has given the person who is for the time being the auditor of the accounts of the body the period of notice in writing required by the advisory notice under section 19A(3)(d), and
  - (c) that that period has expired.
- (3) An advisory notice takes effect on the day on which a copy of the notice is served on the person to whom it is addressed, and ceases to have effect—
  - (a) where a statement of reasons is not served in accordance with subsection (6) of section 19A, at the end of the period specified in that subsection, or
  - (b) when it is withdrawn under section 19A(8).
- (4) Any expenses reasonably incurred by an auditor in or in connection with the issue of an advisory notice are recoverable by him from the body concerned.
- (5) In this section “the body concerned”, in relation to an advisory notice, means the body to which, or to any officer of which, the notice is addressed.

19C.—(1) Where—

- (a) before an advisory notice is served, a body enters into a contract to dispose of or acquire an interest in land, and
- (b) before the disposal or acquisition is completed, an advisory notice takes effect as a result of which it is unlawful for the body to complete the disposal or acquisition,

the existence of the advisory notice does not prejudice any remedy in damages which may be available to any person by reason of the body’s failure to complete the contract.

- (2) No action lies against an auditor in respect of loss or damage alleged to have been caused by reason of the issue of an advisory notice which was issued in good faith.]

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### Textual Amendments

**F2** S. 19B inserted (19.12.2000 (E.) and for specified purposes (W.) and otherwise *prosp.*) by 2000 c. 22, ss. 91(1), 108(3); S.I. 2000/3335, art. 2

### [<sup>F3</sup>20] Other bodies: prohibition orders.

- (1) The auditor for the time being of the accounts of a body subject to audit other than a health service body may issue an order under this section (a “prohibition order”) if he has reason to believe that the body or an officer of the body—
  - (a) is about to make or has made a decision which involves or would involve the body incurring expenditure which is unlawful;
  - (b) is about to take or has taken a course of action which, if pursued to its conclusion, would be unlawful and likely to cause a loss or deficiency; or
  - (c) is about to enter an item of account, the entry of which is unlawful.
- (2) For the purposes of this section and section 22, the actions of—
  - (a) a committee or sub-committee of a body, or
  - (b) any other person (other than an officer) authorised to act on behalf of the body,
 are to be treated as the actions of the body itself.
- (3) A prohibition order is an order which—
  - (a) is addressed to the body or officer concerned;
  - (b) specifies the paragraph of subsection (1) which is relevant and the decision, course of action or item of account to which the order relates;
  - (c) specifies the date on which (subject to subsection (6)) the order is to take effect, which must not be earlier than the date of service of a copy of the order in accordance with paragraph (a) or (as the case may be) paragraphs (a) and (b) of subsection (5); and
  - (d) requires the body or officer concerned to desist from making or implementing the decision, taking or continuing to take the course of action or entering the item of account in question (as the case may be).
- (4) Where two or more auditors are appointed in relation to the accounts of any body—
  - (a) the power to issue a prohibition order may be exercised by the auditors acting jointly or by such one of them as they may determine; and
  - (b) in relation to such an order, references in subsections (5) and (6) to the auditor are references to the auditor or auditors by whom the order is issued.
- (5) A copy of a prohibition order—
  - (a) shall be served on the body to which, or to an officer of which, it is addressed;
  - (b) in the case of an order addressed to an officer, shall also be served on him; and
  - (c) may be served on such other person or persons as the auditor considers appropriate.
- (6) A prohibition order does not have effect unless, not later than the end of the period of seven days beginning on the date of service referred to in subsection (3)(c), the auditor serves on the body concerned and on any officer on whom a copy of the order was served under subsection (5)(b), a statement of the auditor’s reasons for the belief referred to in subsection (1).

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- (7) Where this section requires a copy of an order or statement to be served on an officer of a body, it shall be served on him by addressing it to him and delivering it to him or leaving it at, or sending it by post to, the office at which he is employed.
- (8) A prohibition order may at any time be revoked (but not varied) by the person who is for the time being the auditor in relation to the accounts of the body to which, or to an officer of which, the order was addressed.]

#### Textual Amendments

**F3** S. 20 ceases to have effect (19.12.2000 (E.) and for specified purposes (W.) and otherwise *prosp.*) by virtue of 2000 c. 22, **ss. 91(2), 108(3)(a)**; S.I. 2000/3335, **art. 2**

#### Modifications etc. (not altering text)

**C2** S. 20 excluded (8.5.2000) by 1999 c. 29, **s. 134(5)** (with Sch. 12 para. 9(1)); S.I. 1999/3434, **art. 3**

### [<sup>F4</sup>21 **Restriction on power to issue prohibition orders.**

- (1) Where—
- (a) a report is made under section 114(2) of the <sup>M1</sup>Local Government Finance Act 1988 (“the 1988 Act”) (chief finance officer’s report on unlawful expenditure etc.), and
- (b) copies of the report are sent in accordance with section 114(4) of the 1988 Act, no prohibition order may be issued during the relevant period as regards any decision, course of action or item of account which led to the report being made.
- (2) For the purposes of subsection (1) the relevant period is the period—
- (a) beginning with the day on which copies of the report are sent, and
- (b) ending with the day (if any) on which the body’s consideration of the report under section 115(2) of the 1988 Act begins.
- (3) If the body fails to hold the meeting to consider the report within the time limit specified in section 115(3) of the 1988 Act that failure is immaterial for the purposes of subsection (2)(b) above.]

#### Textual Amendments

**F4** S. 21 ceases to have effect (19.12.2000 (E.) and for specified purposes (W.) and otherwise *prosp.*) by virtue of 2000 c. 22, **ss. 91(2), 108(3)(a)**; S.I. 2000/3335, **art. 2**

#### Modifications etc. (not altering text)

**C3** S. 21 excluded (8.5.2000) by 1999 c. 29, **s. 134(5)** (with Sch. 12 para. 9(1)); S.I. 1999/3434, **art. 3**

#### Marginal Citations

**M1** 1988 c. 41.

### [<sup>F5</sup>22 **Effect of and appeals against prohibition orders.**

- (1) While a prohibition order has effect, it is not lawful for the body concerned or any officer of that body to make or implement the decision, to take or continue to take

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the course of action or to enter the item of account to which the order relates (as the case may be).

- (2) A prohibition order—
- (a) takes effect, subject to subsection (6) of section 20, on the date specified in the order in accordance with subsection (3)(c) of that section; and
  - (b) continues to have effect, subject to any order or decision of the High Court on an appeal under subsection (3) below, until revoked under section 20(8).
- (3) Not later than 28 days after service under section 20(6) of a statement of reasons relating to a prohibition order, the body concerned (but not an officer of that body) may appeal against the order to the High Court in accordance with rules of court.
- (4) On an appeal against a prohibition order under subsection (3), the High Court may make such order as it thinks fit for the payment by the body concerned of expenses incurred by the auditor in connection with the appeal.
- (5) Any expenses reasonably incurred by the auditor in or in connection with the issue of a prohibition order are recoverable by him from the body concerned.
- (6) In this section “the body concerned”, in relation to a prohibition order, means the body to which, or to any officer of which, the order is addressed.]

#### Textual Amendments

**F5** S. 22 ceases to have effect (19.12.2000 (E.) and for specified purposes (W.) and otherwise *prosp.*) by 2000 c. 22, **ss. 91(2), 108(3)(a)**; S.I. 2000/3335, **art. 2**

#### Modifications etc. (not altering text)

**C4** S. 22 excluded (8.5.2000) by 1999 c. 29, **s. 134(5)** (with Sch. 12 para. 9(1)); S.I. 1999/3434, **art. 3**

### [<sup>F6</sup>23 **Loss etc. caused by prohibition orders.**

- (1) Where—
- (a) before a prohibition order is issued, a body enters into a contract to dispose of or acquire an interest in land, and
  - (b) before the disposal or acquisition is completed, a prohibition order takes effect as a result of which it is unlawful for the body to complete the disposal or acquisition,
- the existence of the prohibition order does not prejudice any remedy in damages which may be available to any person by reason of the body’s failure to complete the contract.
- (2) No action lies against an auditor in respect of loss or damage alleged to have been caused by reason of the issue of a prohibition order which was issued in good faith; but that does not affect the right of a court to award costs against an auditor on an appeal under section 22(3).]

#### Textual Amendments

**F6** S. 23 ceases to have effect (19.12.2000 (E.) and for specified purposes (W.) and otherwise *prosp.*) by virtue of 2000 c. 22, **ss. 91(2), 108(3)(a)**; S.I. 2000/3335, **art. 2**

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**Modifications etc. (not altering text)**

C5 S. 23 excluded (8.5.2000) by 1999 c. 29, s. 134(5) (with Sch. 12 para. 9(1)); S.I. 1999/3434, art. 3

**24 Power of auditor to apply for judicial review.**

- (1) Subject to section 31(3) of the <sup>M2</sup>Supreme Court Act 1981 (no application for judicial review without leave) the auditor appointed in relation to the accounts of a body other than a health service body may make an application for judicial review with respect to—
  - (a) any decision of that body, or
  - (b) any failure by that body to act,which it is reasonable to believe would have an effect on the accounts of that body.
- (2) The existence of the powers conferred on an auditor under this Act is not a ground for refusing an application falling within subsection (1) (or an application for leave to make such an application).
- (3) On an application for judicial review made as mentioned in subsection (1), the court may make such order as it thinks fit for the payment, by the body to whose decision the application relates, of expenses incurred by the auditor in connection with the application.

**Modifications etc. (not altering text)**

C6 S. 24 excluded (8.5.2000) by 1999 c. 29, s. 134(5) (with Sch. 12 para. 9(1)); S.I. 1999/3434, art. 3

**Marginal Citations**

M2 1981 c. 54.

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