

REPORT TO: POLICY AND RESOURCES COMMITTEE – 11 FEBRUARY 2002
REPORT ON: ETHICAL STANDARDS IN PUBLIC LIFE ETC. (SCOTLAND) ACT 2000
REPORT BY: DIRECTOR OF SUPPORT SERVICES
REPORT NO.: 72-2002

1. PURPOSE OF REPORT

- 1.1 This Report advises the Committee of the bringing into force of certain provisions of the Ethical Standards in Public Life Etc (Scotland) Act 2000.

2. RECOMMENDATION

- 2.1 The Committee is recommended to note the contents of this Report.

3. FINANCIAL IMPLICATIONS

- 3.1 There are no financial implications arising out of this Report

4. LOCAL AGENDA 21 IMPLICATIONS

- 4.1 There are no Local Agenda 21 implications arising out of this Report.

5. EQUAL OPPORTUNITIES IMPLICATIONS

- 5.1 There are no equal opportunities implications arising out of this Report

6. MAIN TEXT

- 6.1 Members will recall that the Ethical Standards in Public Life Etc (Scotland) Act 2000 has received Royal Assent but that the provisions of the Act are to be brought into force by Statutory Instrument.
- 6.2 The Ethical Standards in Public Life Etc (Scotland) Act 2000 (Commencement No. 2 and Transitional Provisions) Order 2001 brought Section 33 of the Act into force on 1 January 2002.
- 6.3 That Section
- (a) revises the special reports and hearings procedure by which the Accounts Commission for Scotland investigates alleged negligence or misconduct by an individual or failure by a local authority in the management of public funds;
 - (b) repeals the existing surcharge provisions and introduces a range of new sanctions in respect of negligence or misconduct by an individual in the management of public funds; and
 - (c) passes responsibility for those sanctions to the Accounts Commission, rather than the Scottish Ministers.

As a result the Accounts Commission's procedures will be similar to those to be made available to the new Standards Commission in respect of allegations about unethical behaviour. This similarity is deliberate: although some variation in process must be expected, officers and members will not need to become familiar with two entirely different systems.

- 6.4 Although many aspects of the reports and hearings procedure remain largely unaltered from those previously available to the Accounts Commission, the new legislation introduces some important changes. In what follows the important changes are summarised.

1. *Discretionary power of Controller of Audit*

Under the old system the Controller of Audit was **obliged** to make a special report to the Accounts Commission in response to any alleged illegality, failure, negligence, or misconduct in relation to public funds. The new provisions allow the Controller of Audit **discretion** in whether any such report need be made.

2. *A right of response to proposed special reports*

Under the old system neither an authority nor any person who was the subject of such allegations had the opportunity to respond formally to a special report by the Controller of Audit until it had been submitted to the Accounts Commission and a special hearing called. Under the new system a special report may not be submitted to the Accounts Commission by the Controller of Audit until the authority and/or any named person have been given the opportunity both to see the proposed report and to respond to it.

3. *New sanctions available to the Accounts Commission*

Under the old system the Accounts Commission itself had no power to impose a sanction. Having considered a report and having held a hearing the Accounts Commission could only **recommend** a course of action to Ministers. Ministers were then free to accept or decline the recommendation with or without modification.

When the recommendation related to the actions of an individual the Accounts Commission were free to recommend (and Ministers free to accept) that the member or officer be surcharged to recover certain losses for which they had been found responsible.

The new legislation amends this procedure in two ways. First, the new system allows the Accounts Commission to consider, and if necessary **impose, sanctions without reference to Ministers**. Secondly, **the surcharge provisions have been removed** to be replaced by a range of new sanctions similar to those available to the Standards Commission – i.e censure, suspension, and disqualification. Although the threat of surcharge is lifted, it should be noted that financial reparation will still be available to authorities for recovery of losses or deficiencies through civil action in the courts.

The new sanctioning powers available to the Commission are:

- **Censure:** this sanction can be imposed on **officers** as well as members.
- **Suspension:** elected members who are suspended are prevented from attending one or more, or all of the following: meetings of the council and of any committee or sub-committee, or any body on which the member is a representative of the council. **The maximum period of suspension is 1 year**, if this goes beyond the date of the next local government election then the period of suspension will end on that date.
- **Disqualification:** an individual may be disqualified from serving as a member, or being elected as a member for **a maximum period of five years**.

It should be noted that the powers of the Accounts Commission in relation to authorities as opposed to individuals have not changed. The Accounts Commission cannot take action directly against an authority as a whole but they can make recommendations to Ministers that include directing an authority to rectify its accounts; these recommendations can be accepted, modified or declined by Ministers. If Ministers do decide to make such a direction the local authority concerned must give effect to it.

4. *New right of appeal against findings*

Under the previous system there was no right of appeal against decisions taken by Ministers. The new system **provides for an appeal to the Sheriff Principal** against any finding or sanction imposed by the Accounts Commission.

A number of grounds of appeal are available, these are:

- A finding was based on an error of law
- Procedural impropriety during the course of the hearing
- The Accounts Commission acted unreasonably in exercising its discretion
- The findings were not supported by fact
- The sanction imposed is excessive

An appeal must be lodged within 21 days of the findings being sent to, or the sanction being imposed upon the officer or member. The finding or sanction will continue to have force pending the outcome of the appeal.

The Sheriff Principal may confirm or quash the finding or may quash the finding and remit the matter back to the Accounts Commission for reconsideration. Sanctions can be confirmed or quashed and be substituted by a lesser sanction. Costs may also be awarded. An appeal against the decision of the Sheriff Principal to the Court of Session is available.

5. *Interim reports and action*

The 2000 Act allows that at any stage in an investigation the Controllor of Audit may issue an interim report. Having received such a report the Accounts Commission may suspend a member if they are satisfied either that it is in the public interest to do so or that it will allow the investigation to proceed. Although this sanction can be imposed without a hearing being called the affected member must be given a right to respond. An affected member can appeal against suspension to the Sheriff Principal.

6.5

The Director of Support Services will continue to bring forward Reports to the Committee on the new Ethical Standards regime and arrange for briefings for Elected Members as appropriate.

7. **CONSULTATION**

- 7.1 The Chief Executive and the Director of Finance have been consulted in the preparation of this Report.

Signature Date

Director of Support Services

NOTE

No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) were relied on to any material extent in preparing the above Report.