

## **PROCEDURE - SECTION 114, 115 and 116 OF THE LOCAL GOVERNMENT FINANCE ACT 1988.**

### **Introduction**

1. This procedure sets out how a situation will be handled that engages Sections 114, 115 and 116 of the Local Government Finance Act 1988 (the Act). It is intended for use by the Authority's Section 151 (S151) Officer.

### **Who is the Authority's S151 Officer**

2. S151 of the Local Government Act 1972 requires local authorities to make arrangements for the proper administration of their financial affairs and appoint a S151 Officer, also known as a Chief Financial Officer, to have responsibility for those arrangements. The Authority's Treasurer fulfils this role.

### **What is a section 114 Report?**

3. As part of their role the S151 Officer will regularly monitor the financial activities of the Authority.
4. Section 114 of the Act looks at two scenarios involving financial activity and explains what the S151 Officer should do in the event that they materialise.

### **What are the Scenarios?**

#### **Scenario 1 - Unlawful activity**

5. This would occur if in the opinion of the S151 Officer the Authority:
  - (a) has made or is about to make a decision which involves or would involve the authority incurring expenditure which is unlawful,
  - (b) has taken or is about to take a course of action which, if pursued to its conclusion, would be unlawful and likely to cause a loss or deficiency on the part of the authority, or
  - (c) is about to enter an item of account the entry of which is unlawful."

#### **Scenario 2 – Exceeding available resources**

6. This would occur if it appears to the S151 Officer " that the expenditure of the Authority incurred (including expenditure it proposes to incur) in a financial year is likely to exceed the resources (including sums borrowed) available to it to meet that expenditure."

## **What should the S151 Officer do?**

7. In both scenarios the S151 Officer needs to follow the same process, as described in paragraphs 8 to 13 below. The publication of a report will instigate a prohibition period as described in paragraphs 16-23 below. In the case of Scenario 2, the S151 Officer is able to personally approve any discretionary expenditure, as described in paragraph 24 below. Note: The Monitoring Officer or other appropriate officer should undertake the actions in paragraphs 14-15 below.
8. Consult with the Chief Fire Officer and Chief Executive and the Monitoring Officer
9. Contact the Chair of the Authority to explain the situation (this is not a formal requirement of the Act);
10. Contact the Home Office to explain the situation (this is not a formal requirement of the Act);
11. Contact the Authority's external auditors (the auditors) to explain the situation;
12. Prepare and send a report to the Authority's members explaining the situation and recommending appropriate action;
13. Send a copy of the report to the auditors.

## **Authority meeting**

14. Once the report has been completed, the Monitoring Officer (or whoever has responsibility for calling the Authority's meetings) will call a meeting of the Authority to discuss the report **within 21 days of the report being sent to the Authority's members.**
15. The Monitoring Officer (or whoever has responsibility for calling the Authority's meetings) will inform the auditors of the date, time and place of the meeting and after the meeting will inform them of any decisions made at the meeting.

## **Prohibition**

16. On the day that the report is published, a prohibition period begins which ends the day after the Authority meeting to discuss the report. The restrictions that apply during the prohibition period depend on which of the scenarios the Section 114 report has been written in response to.
17. If the Section 114 report is in response to Scenario 1, unlawful or potentially unlawful activity, then during the prohibition period any action relating to this activity may not be pursued.
18. If the Authority were to make any payment in relation to the activity it will be deemed to be acting beyond its powers.
19. If the Section 114 report is in response to Scenario 2, expenditure exceeding resources, then during the prohibition period the Authority may not enter into any new agreement which may involve the Authority incurring expenditure. The only exceptions to this are where entering into any agreement would, in the opinion of the S151 Officer:
  - Prevent the situation prompting the report getting worse
  - Improve the situation
  - Prevent the situation from recurring
20. Any such agreement entered into during the prohibition period will be authorised by the S151 Officer in writing, identifying the grounds for entering into the agreement, and identifying why the S151 Officer thinks the grounds apply.
21. If the Authority makes a new agreement committing it to expenditure which does not follow the process above it would be deemed to be acting beyond its powers.

## **Discretionary Expenditure**

22. In addition, all payments of a non-discretionary nature (ie those to which the Authority is not contractually committed) should be agreed by the S151 Officer in writing before they are made (this is not a requirement of the Act).

## **Substitution**

23. If for any reason the Section 151 Officer is unable to perform the duties in this procedure, it will be undertaken by their nominated deputy, or a suitably qualified officer, or an officer nominated by the Section 151 Officer.

24. This procedure will be reviewed annually by the Treasurer and the Monitoring Officer who may make minor amendments and every three years by Governance and Constitution Committee.