

# **PUBLIC AUDIT (WALES) ACT 2013**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 1: Auditor General for Wales**

##### ***Section 2 – Office of Auditor General for Wales***

5. This section provides for the office of the AGW to continue. At present, the office of AGW is established under Schedule 8 to the Government of Wales Act 2006. By reference to the office of AGW continuing, the effect is that there is no break in the continuity of that office or in the exercise of the functions of that office. Under section 2(2) Her Majesty is to appoint an individual to that office on the nomination of the National Assembly for Wales ('the Assembly'). Appointment to the office is for a maximum of 8 years; a person may only hold the office of AGW once.
6. Before making a nomination to Her Majesty as to the person who should be appointed as AGW, the Assembly must be satisfied reasonable consultation with those bodies representing the interests of local government bodies in Wales has been undertaken.

##### ***Section 3 – Resignation or removal***

7. The AGW holds office until the end of the term for which he or she has been appointed (which can be up to 8 years from appointment, see section 2) unless the AGW is:
  - relieved of the appointment by Her Majesty at the AGW's request;
  - relieved of the appointment because Her Majesty is satisfied that the AGW is no longer capable of performing the duties because of medical reasons; and is also incapable for such reasons of requesting he or she be relieved of office;
  - removed from post by Her Majesty because of misbehaviour.
8. Removal from post on the grounds of misbehaviour is done only on the recommendation of the Assembly. Such a recommendation can only be made if at least two-thirds of all Assembly Members vote in favour of such action.

##### ***Section 4 – Disqualification***

9. This section sets out the grounds which would disqualify a person from being the AGW. The grounds relate to being a member of a legislature within the United Kingdom, an employee of the WAO, or holder of any other office or position appointed by the Crown, the Assembly or the Assembly Commission.

##### ***Section 5 – Employment etc of former Auditor General***

10. This section prescribes the restrictions around future employment, office-holding or provision of services that will apply to persons who have been appointed as the AGW under this Act but who no longer hold the office. The restrictions apply for two years beginning on the day the person ceases to hold office. The aim is to avoid any possible

conflict of interest or perception of such a conflict when the person is AGW – e.g. to avoid the situation where an AGW nearing the end of his or her term of office carries out his or her functions leniently in respect of a body to which he or she may be appointed upon ceasing to be AGW.

### ***Section 7 – Remuneration***

11. The Assembly is required to make remuneration arrangements for an AGW appointed under this Act (prior to the appointment of the AGW), and such arrangements may include salary, allowances, gratuities, pension arrangements and other benefits. In all cases these arrangements (or elements therein) cannot be performance-based.
12. In determining the arrangements the Assembly is required to consult with the First Minister.
13. Amounts payable will be charged on the Welsh Consolidated Fund (WCF), which means that payment will be directly from that Fund rather than from monies voted annually by the Assembly. This is designed to further protect the independence of the AGW.
14. Note also paragraph 13 of Schedule 1 and paragraph 1 of Schedule 3 to the Act – see below.

### ***Section 8 – How functions are to be exercised***

15. This section maintains and enhances the independence of the AGW in the exercise of his or her functions – the functions of the office are not subject to the direction or control of the Assembly or the Welsh Government and there is new provision to make clear that the AGW has complete discretion in the manner in which he or she exercises audit related functions.
16. However this is subject to the following. The AGW must seek to perform his or her functions efficiently, and in a cost-effective manner. The AGW must also have regard to the standards and principles of professional practice in relation to auditing and accounting. The AGW must have regard to advice provided by the WAO and provided the AGW has regard to that advice the AGW has complete discretion in the exercise of his or her audit related functions.

### ***Section 9 – Supplementary powers***

17. This section provides the AGW with a general power to do anything which facilitates, or is incidental or conducive to, the exercise of his or her functions. The general power does not extend however to functions which are or could become the responsibility of the WAO under this Act.

### ***Section 10 – Code of audit practice***

18. The AGW must issue a code of practice which embodies the best professional practice to be adopted in the carrying out of his or her functions relating to the:
  - examining of any accounts (including of local government bodies in Wales) or statement of accounts in accordance with any enactment;
  - carrying out, undertaking or promoting value for money studies or examinations; and
  - as provided for in various provisions of the Government of Wales Act 1998, the Public Audit (Wales) Act 2004 and Schedule 8 to the Government of Wales Act 2006.
19. In preparing the Code the AGW must consult those persons he or she thinks appropriate. When the Code is made and published, the AGW must comply with it.

***Section 11 – Audit of local government bodies***

20. This provides for the AGW to be the statutory auditor of the accounts of all local government bodies in Wales. Section 11 should be read with paragraph 2 of Schedule 3 to the Act – see below.
21. At present the AGW is not empowered to audit the accounts of local government bodies. Instead auditors are appointed by the AGW to perform those audits. Given the AGW has other functions in respect of local government bodies (for example in relation to value for money), is responsible for auditing the Welsh Government, Welsh NHS bodies and others, and the thrust of other proposals in the Act, it is considered appropriate for the audit of local government bodies in Wales to be vested with the AGW.
22. Section 16 of the Local Government (Wales) Measure 2009 provides that ‘relevant regulators’ include an auditor appointed under section 13 of the Public Audit (Wales) Act 2004. Because of the amendments made by section 11(1) of this Act, a consequential amendment is required to the 2009 Measure as there will no longer be auditors appointed by the AGW in this context. That is achieved by section 11(2) of the Act.

***Section 12 – Transfer etc of supervisory functions of Welsh Ministers: consultation***

23. Under section 146A of the Government of Wales Act 1998 certain functions of the Welsh Ministers may, by order, be transferred to or exercised on their behalf by the AGW. Such transfer, or exercise, can only be with the consent of the AGW.
24. **Section 12** of the Act amends section 146A of the 1998 Act so as to require the Welsh Ministers to consult with the WAO before making such an order. The requirement for the AGW to consent to the transfer or exercise of such functions remains unchanged.