

# **PUBLIC AUDIT (WALES) ACT 2004**

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## **EXPLANATORY NOTES**

### **TERRITORIAL EXTENT AND DEVOLUTION**

#### **Part 2, Chapter 1: Accounts and Audit**

42. **Part 2** of the Act relates to the arrangements for auditing the accounts of local government bodies in Wales; carrying out studies into the way in which they exercise their functions, provide services or are managed; ensuring that information about their performance is published; and other related matters. It also introduces Schedule 1, which amends, in relation to Wales, the Best Value regime set out in the Local Government Act 1999. The classes of bodies comprising local government bodies in Wales are set out in section 12.
43. **Chapter 1** largely comprises equivalent provisions to those consolidated into Part 1 of the Audit Commission Act 1998, and before that in the Local Government Finance Act 1982. The Act in effect transfers responsibility for making the arrangements referred to in the previous paragraph, in respect of Wales, from the Audit Commission to the Auditor General. It does so in a way that is intended to acknowledge and preserve local government democratic accountability.

#### **Local government bodies in Wales**

##### ***Section 12: Local government bodies in Wales***

44. This section defines the term “local government body in Wales”. All the bodies included in the term are, until the Act comes into force, included in Schedule 2 to the ACA as bodies subject to audit under that Act. Section 12(1)(a) refers to a “local authority in Wales”. This term is itself defined in section 59(5).
45. **Section 12(2)** contains a power for the Assembly, by order, to add further public bodies operating exclusively in Wales to the list of local government bodies in Wales, or to remove bodies from that list, or to alter the description of a body within the list. It is expected that this power is most likely to be used in the case of changes to the local government or related sectors, or to the Assembly’s powers.

#### **Audit of accounts**

##### ***Section 13: Audit of accounts of local government bodies in Wales***

46. This section requires local government bodies in Wales to make up their accounts each year to 31 March (or such other date as the Assembly may direct) and ensure that those accounts are audited by one or more auditors appointed by the Auditor General for Wales. It imposes a corresponding requirement on the Auditor General to appoint such auditors.

#### ***Section 14: Appointment of auditors***

47. This section sets out arrangements for the appointment of auditors under section 13. The Auditor General's power of appointment is drafted in terms of "persons". By virtue of section 5 of and Schedule 1 to the Interpretation Act 1978, the term "person" includes a body corporate or unincorporate (unless the contrary intention appears). Thus the Auditor General may appoint an individual auditor or a firm of auditors to audit the accounts of a local government body in Wales. (Where the applicable legislation allows, he may also appoint a body corporate of auditors). He has the power to appoint a member of his staff. The Auditor General may only appoint an individual (including a member of his staff) or a firm of individuals as auditors if they satisfy the criteria set out in the section. These criteria are designed to guarantee that the appointed auditors have the appropriate professional qualifications or experience and can show suitable evidence of good conduct and repute.
48. The Auditor General must consult the body in question before appointing an auditor for it.
49. More than one auditor may be appointed for the same body, in which case references in Part 2 to "the auditor" means any one of them (section 59(3)).
50. The Auditor General may not appoint himself as the auditor of the accounts of local government bodies. This marks a difference between the treatment of local government bodies in Wales on the one hand, and Welsh NHS bodies, Assembly sponsored public bodies etc. on the other.

#### ***Section 15: Persons to assist auditors***

51. This section enables the Auditor General to approve arrangements for one or more persons to assist an auditor appointed under section 13 (an "appointed auditor"). The remaining references to auditors in Part 2 relate both to appointed auditors and those assisting them. This provision is likely to be used where the Auditor General feels that specialist help is needed for a particular audit - such as a forensic accountant on complex taxation issues or an information technology expert for the interrogation and analysis of particularly complex computer databases.

#### ***Section 16: Code of audit practice***

52. This section enables the Auditor General to issue and revise from time to time a code of practice embodying the best professional practice with respect to standards, procedures and techniques to be adopted by auditors appointed by him when they are auditing the accounts of local government bodies in Wales. Any code prepared or revised under section 16 must be ratified by the Assembly in the first instance, and is subject to annulment by either House of the United Kingdom Parliament. The Assembly cannot delegate the function of ratifying the code. Until a code under this section comes into force, auditors appointed by the Auditor General must adhere to the extant Code of Audit Practice published by the Audit Commission in March 2002, and prepared in accordance with section 4 of the ACA. Section 17(4) imposes a duty on the auditors to this effect.

#### ***Section 17: General duties of auditors***

53. This section sets out the general duties with which an appointed auditor must comply when auditing the accounts of a local government body in Wales. These include compliance with the relevant Code of Audit Practice, whether prepared under section 4 of the ACA or section 16 of the Act.

**Sections 18 & 19: Auditors' rights to documents and information**

54. **Section 18** gives the appointed auditor a right of access at all reasonable times to “every document relating to a local government body in Wales” which he considers necessary for his functions under Chapter 1.
55. Subsection (2) makes it clear that the enhanced power of access to documents enables an appointed auditor to have access to documents in a financial chain relating to the use of public money. For instance, a local government body in Wales may (if in accordance with its own specific powers) use a grant paid to it by the Assembly to provide a grant, loan or guarantee to a third party. The local government body in Wales may also contract with another organisation to provide a service to it and certain components of this service may in turn be sub-contracted. Section 18(2) makes it clear that the appointed auditor may, if necessary, have access to documents relating to these kinds of transactions - documents held or controlled by anyone who has received financial assistance from a local government body in Wales, or who has supplied goods or services to the body under a contract, or who has been a sub-contractor in relation to such a contract. The aim of this provision is to ensure that regularity, propriety and the principles of value for money apply to the use of public money at each stage in the chain of expenditure.
56. **Section 18** is consistent with section 95 of the GOWA (as substituted) in this respect (see the note on section 11, above), and also with section 52, which deals with the rights of the Auditor General to documents and information etc. when carrying out his functions in relation to local government bodies in Wales. The Act, thus, seeks to ensure a single standard of access to documents and information etc. in public sector audit in Wales, consistent with the recommendations made by Lord Sharman of Redlynch in his report “Holding to Account - the Review of Audit and Accountability for Central Government (February 2001)”.
57. By virtue of section 18(2)(c), the Assembly has a power to extend the categories of documents for the purposes of this section. It may by order specify any other description of documents to which the appointed auditor’s right of access will apply. Before making such an order, the Assembly must consult the Auditor General and such associations of local authorities in Wales as appear to be concerned. The Assembly may use this power in order to extend the description of documents etc. that appointed auditors may access in order to trace the use of public funds. For example, if an auditor is auditing the accounts of a local government body in Wales, he may need to have access to documents relating to the use of funds by organisations in receipt of significant grant funding. If that organisation had contracted with contractor A who in turn had sub-contracted with contractor B, the Assembly could make an order to ensure that the auditor could have access, if necessary, to relevant documents held by contractor B.
58. In addition to his right of access to documents, an appointed auditor has a right to any assistance, information and explanation he thinks necessary for the purposes of carrying out his functions under Chapter 1. By virtue of subsections (4) and (5) of section 18, an auditor can require such assistance, information and explanation from anyone he thinks has information about:
- a local government body in Wales in relation to which the auditor has functions under Chapter 1;
  - a document to which the auditor has a right of access; or
  - a person who holds or controls such a document.

An auditor can require such a person to attend before him in person to give the assistance, information or explanation, or to produce a document to which the auditor has a right of access.

59. This right to information is intended to assist the auditor to ascertain the facts where, for instance, a document which he is entitled to see cannot be located. It is consistent with provisions in section 95 of the GOWA (as substituted by section 11) and section 52.
60. The auditor is also entitled to “every facility” (e.g. adequate accommodation, lighting, heating, access to relevant computer hardware and software etc.) and any other information he may need to enable him to do his work (section 18(6)).
61. **Section 19** specifies that a person who fails to comply with any of the requirements in section 18(4), without reasonable excuse, is guilty of an offence, lays down the applicable penalty and provides for the appointed auditor to be able to recover any expenses he or she incurs in connection with a successful prosecution under the section. Section 18(4) is the provision which enables the auditor to require production of a document to which he has a right of access, or to require assistance, information or explanation from certain persons.

### ***Section 20: Fees for audit***

62. This section requires the Auditor General to prescribe a scale or scales of fees in respect of the audit of accounts of local government bodies in Wales. The scale(s) prescribed are subject to prior consultation. If it appears to the Auditor General that work on a particular audit differs substantially from that envisaged by the appropriate scale, the fee charged may differ. Different scales can apply to different categories of local government bodies in Wales (e.g., county and county borough councils, fire and rescue authorities, National Park authorities).

### ***Section 21: Fees prescribed by Assembly***

63. This section enables the Assembly to prescribe, following consultation, a scale or scales of fees to replace those prescribed by the Auditor General. It is possible that the Assembly might use this power if, for instance, it considered the scale(s) to be excessive, in general or in particular circumstances, or if consultation by the Auditor General had produced an irreconcilable conflict of views. Under section 93 of the GOWA, the Assembly must make up any shortfall between the Auditor General’s income (such as from fees) and his expenditure.

## **Auditors' reports and recommendations**

### ***Section 22: Immediate and other reports in public interest***

64. This section imposes a duty on the appointed auditor to consider whether the public interest requires him to make a report on a matter which comes to his notice in the course of the audit (a “public interest report”). If an auditor considers that the public interest requires the matter to be the subject of an immediate public interest report, then he must make the report immediately and send a copy of it to the body concerned and to the Auditor General immediately after making it. If he considers that the public interest requires a report, but not an immediate one, he must make the report at the conclusion of the audit, and send it to the body concerned and to the Auditor General within 14 days starting with the day on which he concludes the audit.

### ***Section 23: General report***

65. This section requires an auditor at the conclusion of an audit to enter, on either a statement of accounts (if required under section 39) or the body’s accounts, his opinion on the statement of accounts or accounts and a certificate that he has completed the audit in accordance with Chapter 1 of Part 2 of the Act. Alternatively, he can include the opinion and certificate in a public interest report made under section 22 (other than an immediate report under section 22(3)).

**Sections 24 to 28: Consideration of reports in public interest**

66. These sections specify procedures relating to the handling of public interest reports issued under section 22.
67. **Section 25** makes special provision about public interest reports sent to local authorities in Wales (as defined in section 59(5)), committees or joint committees thereof, National Park authorities in Wales, police authorities for police areas in Wales and fire and rescue authorities for areas in Wales, as established under the Fire and Rescue Services Act 2004.
68. Under section 25, a local government body in Wales, other than a port health authority, a conservation board, an internal drainage board, or a local probation board, must meet to consider the report, together with any action the body proposes to take in respect of it, within 1 month from the day the report is sent to it. This period may be extended by the auditor if he considers an extension to be reasonable. A written recommendation made by the body's auditor must be considered in accordance with the same procedures, if the auditor states that in his opinion it should be.
69. Other local government bodies (i.e. a port health authority, etc) in Wales must consider a public interest report as soon as practicable after receiving it (section 24(2)(a)). The difference is intended to take account of the fact that these other local government bodies tend to be smaller and have smaller administrative resources, so that it is more difficult for them to comply with a swift and rigid timetable.
70. **Section 24** makes general provision to prevent a body which receives a report from hindering public access to its contents or to any meeting at which it is to be discussed. This applies, as a minimum, to all kinds of local government bodies in Wales, and to both immediate and non-immediate reports.
71. **Section 26** lays down additional things that the larger local government bodies in Wales (local authorities, committees or joint committees thereof, National Park authorities, police authorities and fire and rescue authorities) must do to publicise a meeting at which a public interest report or an auditor's written recommendation is to be discussed and the body's decisions arising from the meeting.
72. **Section 27** applies to all local government bodies in Wales, but only to immediate reports. It provides for additional publicity drawing the issue of such a report to the attention of the public, over and above what section 24 or 25 (as applicable) requires of the body concerned. It requires that immediate reports should be publicly available for inspection and that a copy should be supplied to all members of the body. It provides that the public should be informed, by means of a notice in a local newspaper as a minimum, of the subject-matter of the report and of their right to inspect it and take or obtain copies. A person who has custody of an immediate report commits an offence if he obstructs a member of the public from exercising his or her rights under the section.
73. The auditor may also notify anyone that he has made the report and supply a copy of it to anyone.
74. **Section 28** applies to all local government bodies in Wales, but only to non-immediate reports. It prescribes arrangements, in addition to those set out in sections 24 and 25 (depending on the type of body concerned) for securing publicity for those reports. The provision gives the auditor the power to publish the report; notify any person that he has made the report; and supply a copy to any person. In addition, he must ensure that any member of the public may inspect the report and make a copy of it free of charge. Once one year has passed since the report was sent to the body, the auditor is no longer under these obligations, but they pass instead to the Auditor General for Wales.
75. The body concerned by the report must also supply a member of the public with a copy, on request and on payment of a reasonable sum (section 29(1)(c)).

## **Public inspection etc and action by auditor**

### ***Section 29: Inspection of statements of accounts and auditors' reports***

76. This section prescribes arrangements for local government electors' access to any statement of accounts of a local government body in Wales. The same access rights apply to any auditor's report on a local government body in Wales (apart from an immediate public interest report made under section 22(3), for which separate arrangements are made by section 27). A person who has custody of any such document and obstructs exercise of the statutory access rights is guilty of an offence.

### ***Section 30: Inspection of documents and questions at audit***

77. This section prescribes arrangements to enable interested persons to inspect or make copies of documents relating to the accounts at an audit of a local government body in Wales. The requirement that a person can only do so if they are "interested" means that a body can require a person wishing to exercise this right of access to show that he or she has a legitimate interest in the accounts of that body. This provision is intended to protect local government bodies from "nuisance" requests. It also gives a local government elector or his representative the right to question the auditor about the accounts. The section does not, however, entitle a person to obtain personal information relating to an individual. The section defines "personal information" in a way which is potentially wider than "personal data" under the Data Protection Act 1998.

### ***Section 31: Right to make objections at audit***

78. This section confers a right on a local government elector for the relevant area to raise objections about the accounts of a local government body in Wales with the auditor. Written notice of the proposed objection and the grounds on which it is to be made must be given to the auditor and the body in question.

### ***Section 32: Declaration that an item of account is unlawful***

79. This section provides that an auditor may apply to the court for a declaration that an item of account is unlawful and sets out the orders which the court can make. It also confers certain procedural rights on local government electors who have raised relevant objections, in the proper manner, under section 31 and imposes duties on the auditor which facilitate the exercise of those rights.

## **Prevention of unlawful expenditure etc**

### ***Sections 33 to 35: Advisory notices***

80. These sections empower the auditor to issue an advisory notice if he has reason to believe that a local government body in Wales is about to take, or has taken, a decision or course of action that is or would be unlawful, or is about to enter an item of account, which entry would be unlawful. They prescribe arrangements for the issue of an advisory notice and the circumstances in which it may be withdrawn. While an advisory notice is in force, the body cannot lawfully take the decision or course of action, or enter the item, until it has considered the consequences of its actions in the light of the auditor's views, given the auditor the statutory notice of its intention to proceed, and the notice period has expired. However, the existence of an advisory notice does not affect anyone's right to claim damages as a result of a failure by the body in receipt of the notice to complete a contract concerning an interest in land where that contract was entered into before the notice was served. Nor does any legal action lie against an auditor in respect of alleged loss or damage resulting from the issue in good faith of an advisory notice.



***Section 36: Power of auditor to make a claim for judicial review***

81. This section empowers an auditor to make a claim for judicial review where he believes that a decision or failure to act by a local government body in Wales would have an effect on the body's accounts - for instance, a failure to reverse a decision that could lead to an unlawful item of account. It also provides that the fact that other powers may be available under Part 2 is not a ground for refusing an auditor's claim for judicial review.

**Miscellaneous**

***Section 37: Extraordinary audit***

82. This section empowers the Auditor General to direct an auditor to hold an extraordinary audit of the accounts of a local government body in Wales if he or the Auditor General considers it desirable or if an application for an extraordinary audit is made by a local government elector for the area. Three clear days' notice must be given to the body of an extraordinary audit. Expenditure related to the audit must be borne initially by the Auditor General although he may recover all or part of the expenditure from the body. The Assembly may also require the Auditor General to direct an auditor to hold such an audit, where the Assembly considers that is desirable in the public interest.

***Section 38: Audit of accounts of officers***

83. This section requires an auditor of a local government body in Wales to audit the accounts of an officer of that body if he holds money or other property on behalf of that body. For instance, the custodian of a property, open to the public on payment of an admission charge, which is in the control of a local government body in Wales is the type of officer whose accounts may be subject to section 38.

***Section 39: Accounts and audit regulations***

84. This section empowers the Assembly, subject to consultation, to make regulations relating to the keeping, form, preparation, certification, deposit and publishing of accounts by local government bodies in Wales, and to the exercise of the rights, conferred on certain classes of the public by sections 29, 30 and 31 to inspect documents and to raise questions and objections. The Assembly can provide that contravention of any provision of the regulations, without reasonable excuse, will be an offence.
85. The Assembly already has this power to make equivalent regulations under section 27 of the ACA, by virtue of The [National Assembly for Wales \(Transfer of Functions\) Order 1999 \(SI 1999/672\)](#) (the Transfer of Functions Order). The power is repeated in this Act for the sake of clarity. A consequential amendment to the Transfer of Functions Order is contemplated.

***Section 40: Documents relating to police authorities***

86. This section requires the Auditor General, if sent a public interest report prepared under section 22 by an appointed auditor, which relates to a police authority or authorities, to send it to the Secretary of State (in practice the Secretary of State for the Home Department) and to the Assembly.