



# Local Government (Wales) Measure 2009

2009 nawm 2

## PART 1

### LOCAL GOVERNMENT IMPROVEMENT

#### *Meaning of “Welsh improvement authority”*

#### **1 Meaning of “Welsh improvement authority”**

For the purposes of this Measure, a “Welsh improvement authority” is—

- (a) a county council and county borough council in Wales;
- (b) a National Park authority for a National Park in Wales; and
- (c) a Welsh fire and rescue authority, that is an authority in Wales constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004 (c. 21) or a scheme to which section 4 of that Act applies.

#### *General duty*

#### **2 General duty in relation to improvement**

- (1) A Welsh improvement authority must make arrangements to secure continuous improvement in the exercise of its functions.
- (2) In discharging its duty under subsection (1), an authority must have regard in particular to the need to improve the exercise of its functions in terms of—
  - (a) strategic effectiveness;
  - (b) service quality;
  - (c) service availability;
  - (d) fairness;
  - (e) sustainability;
  - (f) efficiency; and
  - (g) innovation.

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(3) For the meanings of paragraphs (a) to (g) of subsection (2), see section 4.

### *Improvement objectives*

## **3 Improvement objectives**

- (1) For each financial year, a Welsh improvement authority must set itself objectives for improving the exercise of its functions during that year (“improvement objectives”).
- (2) A Welsh improvement authority must make arrangements to secure achievement of its improvement objectives.
- (3) An improvement objective must be framed so as to improve the exercise of the function or functions to which it relates in terms of at least one of the following—
  - (a) strategic effectiveness;
  - (b) service quality;
  - (c) service availability;
  - (d) fairness;
  - (e) sustainability;
  - (f) efficiency; and
  - (g) innovation.
- (4) For the meanings of paragraphs (a) to (g) of subsection (3), see section 4.

### *Improvement: supplementary*

## **4 Aspects of improvement**

- (1) This section provides for the meanings of paragraphs (a) to (g) of—
  - (a) section 2(2);
  - (b) section 3(3); and
  - (c) section 8(5).
- (2) A Welsh improvement authority improves the exercise of its functions in terms of—
  - (a) strategic effectiveness, if it exercises its functions in a way which is reasonably likely to lead to the achievement of, or assist in achieving, any of its strategic objectives;
  - (b) service quality, if there is an improvement in the quality of services;
  - (c) service availability, if there is an improvement in the availability of services;
  - (d) fairness, if—
    - (i) disadvantages faced by particular groups in accessing, or taking full advantage of, services are reduced; or
    - (ii) social well-being is improved as a result of the provision of services or the way in which functions are otherwise exercised;
  - (e) sustainability, if services are provided or functions are otherwise exercised in a way which contributes towards the achievement of sustainable development in the authority’s area;

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- (f) efficiency, if there is an improvement in the efficiency with which resources are used in the provision of services or in the way in which functions are otherwise exercised; and
  - (g) innovation, if the way in which services are provided or functions are otherwise exercised is altered in a manner which is reasonably likely to lead to any outcome described in paragraphs (a) to (f).
- (3) For the purposes of subsection (2)(a), a Welsh improvement authority's strategic objectives are—
- (a) in the case of a county council or a county borough council, the community strategy objectives contained in the current community strategy for the authority's area;
  - (b) in the case of a National Park authority—
    - (i) any relevant community strategy objectives; and
    - (ii) where the authority's National Park Management Plan includes objectives for the authority to meet in the exercise of its functions, those objectives;
  - (c) in the case of a Welsh fire and rescue authority—
    - (i) any relevant community strategy objectives; and
    - (ii) where the authority has decided to set itself objectives in response to guidance contained in the Fire and Rescue National Framework, those objectives.
- (4) For the purposes of this section—
- (a) “current community strategy” (*“strategaeth gymunedol gyfredol”*) means the community strategy for a local authority's area published under section 39(4) or, where the strategy has been amended following a review under section 41, the strategy most recently published under section 41(6);
  - (b) “Fire and Rescue National Framework” (*“Fframwaith Cenedlaethol Tân ac Achub”*) means the Framework prepared by the Welsh Ministers and having effect under section 21 of the Fire and Rescue Services Act 2004 (including any revisions to the Framework which have effect under that section);
  - (c) “National Park Management Plan” (*“Cynllun Rheoli Parc Cenedlaethol”*) means the Plan published by a National Park authority under section 66 of the Environment Act 1995 (c. 25) (including any amendments to the Plan published under subsection (6) of that section);
  - (d) “relevant community strategy objective” (*“amcan strategaeth gymunedol perthnasol”*) means an objective that—
    - (i) is contained within a current community strategy the production of which involved the authority as a community planning partner (within the meaning of section 38); and
    - (ii) is connected with the authority's functions;
  - (e) a reference to services is to—
    - (i) services provided by the authority in the exercise of its functions;
    - (ii) services provided by any other person under arrangements made by the authority in the exercise of its functions.

## **5 Consultation about the general duty and improvement objectives**

- (1) For the purpose of deciding how to fulfil the duties under section 2(1) and 3(1) a Welsh improvement authority must consult—
  - (a) representatives of persons resident in the authority’s area;
  - (b) representatives of persons liable to pay non-domestic rates in respect of any area within which the authority carries out functions;
  - (c) representatives of persons who use or are likely to use services provided by the authority; and
  - (d) representatives of persons appearing to the authority to have an interest in any area within which the authority carries out functions.
- (2) For the purposes of subsection (1) “representatives” in relation to a group of persons means persons who appear to the authority to be representative of that group.

## **6 The general duty, improvement objectives and consultation: guidance**

In deciding—

- (a) how to discharge its duties under section 2(1), 3(1) and 3(2);
  - (b) who to consult under section 5; or
  - (c) the form, content and timing of consultations under section 5,
- a Welsh improvement authority must have regard to any guidance issued by the Welsh Ministers.

## **7 Aspects of improvement: amendment**

- (1) The Welsh Ministers may by order—
  - (a) amend or omit any paragraph of subsection (2) of section 4;
  - (b) add additional paragraphs to that subsection;
  - (c) amend or omit such additional paragraphs.
- (2) Such an order may make such amendments of this Measure as appear to the Welsh Ministers to be necessary or expedient in connection with the provision made under subsection (1).
- (3) Before making such an order, the Welsh Ministers must consult—
  - (a) persons appearing to them to represent Welsh improvement authorities, and
  - (b) such other persons (if any) as they think fit.

### *Performance indicators and standards*

## **8 Performance indicators and standards**

- (1) The Welsh Ministers may by order specify—
  - (a) factors (“performance indicators”) by reference to which a Welsh improvement authority’s performance in exercising functions can be measured;
  - (b) standards (“performance standards”) to be met by Welsh improvement authorities in relation to performance indicators specified under paragraph (a).
- (2) An order may specify different performance indicators or standards—

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- (a) for different functions;
  - (b) for different authorities or descriptions of authority;
  - (c) to apply at different times.
- (3) Before specifying performance indicators or standards the Welsh Ministers must consult—
- (a) persons appearing to them to represent the authorities concerned,
  - (b) the Auditor General for Wales, and
  - (c) such other persons (if any) as they think fit.
- (4) In deciding whether to specify performance indicators and standards, and in deciding them, the Welsh Ministers must aim to promote improvement of the exercise of the functions of Welsh improvement authorities.
- (5) In particular, the Welsh Ministers must be concerned with the need to improve the exercise of those functions in terms of at least one of the following—
- (a) strategic effectiveness;
  - (b) service quality;
  - (c) service availability;
  - (d) fairness;
  - (e) sustainability;
  - (f) efficiency; and
  - (g) innovation.
- (6) For the meanings of paragraphs (a) to (g) of subsection (5), see section 4(2).
- (7) A Welsh improvement authority must make arrangements to exercise its functions so that any applicable performance standard specified under subsection (1)(b) is met.

### *Collaboration and improvement*

## **9 Powers to collaborate etc**

- (1) For the purpose of discharging or facilitating the discharge of its duties under section 2(1), 3(2) and 8(7) or the duties of another Welsh improvement authority under those sections, a Welsh improvement authority has the powers in subsection (2).
- (2) The powers are—
- (a) to provide financial assistance to any person;
  - (b) to enter into arrangements or agreements with any person;
  - (c) to co-operate with, or facilitate or co-ordinate the activities of, any person;
  - (d) to exercise on behalf of any person any functions of that person; and
  - (e) to provide staff, goods, services or accommodation to any person.
- (3) This section is without prejudice to any other power of a Welsh improvement authority.

## **10 Fire and rescue authorities: powers of delegation**

- (1) For the purpose of discharging or facilitating the discharge by a Welsh fire and rescue authority of its duties under sections 2(1), 3(2) and 8(7), section 101(1)(b) and (5) of the Local Government Act 1972 (c. 70) (arrangements for discharge of functions

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by local authorities) shall have effect as if the authority were a local authority for the purposes of that section.

- (2) This section is without prejudice to any other power of a Welsh fire and rescue authority.

## 11 Meaning of “powers of collaboration”

- (1) For the purposes of this Part, a reference to a Welsh improvement authority’s “powers of collaboration” is a reference to the following—

- (a) the Welsh improvement authority’s powers under section 9 of this Measure;
- (b) in the case of a county council or county borough council—
  - (i) their powers under section 101(1)(b) and (5) of the Local Government Act 1972 (arrangements for the discharge of functions by local authorities);
  - (ii) a power of the executive of the authority (or a committee or specified member of the executive) to make arrangements for the discharge of their functions under regulations made under section 19(1) of the Local Government Act 2000 (c. 22) (discharge of functions of and by another local authority);
  - (iii) a power of the authority to make arrangements for the discharge of their functions under regulations made under section 19(2) of the Local Government Act 2000;
- (c) a power of the Welsh improvement authority to authorise a person (or the person’s employees) to exercise a function on the authority’s behalf under an order made under section 70 of the Deregulation and Contracting Out Act 1994 (c. 40);
- (d) in the case of a Welsh fire and rescue authority, its powers under section 101(1)(b) and (5) of the Local Government Act 1972 (as given effect in relation to the authority by section 10 of this Measure);
- (e) in the case of a National Park authority, its powers under section 101(1)(b) and (5) of the Local Government Act 1972 (as given effect in relation to the authority by paragraph 13 of Schedule 7 to the Environment Act 1995 (c. 25)).

- (2) In subsection (1)(b)(ii) “executive” has the same meaning as in Part II of the Local Government Act 2000.

## 12 Duties in relation to powers of collaboration

- (1) A Welsh improvement authority must from time to time consider whether the exercise of any of its powers of collaboration would assist it to discharge its duties under sections 2(1), 3(2) and 8(7).
- (2) If the authority concludes that the exercise of a power of collaboration would assist it to comply with those duties it must seek to exercise, or cause to be exercised, the power.

### *Improvement planning and information*

## **13 Collection of information related to performance**

- (1) A Welsh improvement authority must make arrangements for—
  - (a) the collection of information which will allow it to assess whether it has met during a financial year those improvement objectives set under section 3(1) which are applicable to that year;
  - (b) the collection of information which will allow it to—
    - (i) measure its performance during a financial year by reference to those performance indicators specified under section 8(1)(a) which are applicable to the authority for that year;
    - (ii) assess whether it has met during a financial year those performance standards specified under section 8(1)(b) which are applicable to the authority for that year;
  - (c) the collection of information which will allow it to—
    - (i) measure its performance during a financial year by reference to those self-imposed performance indicators which are applicable to that year;
    - (ii) assess whether it has met during a financial year those self-imposed performance standards which are applicable to that year.
- (2) For the purposes of this section and sections 14 and 15—
  - (a) a self-imposed performance indicator is a factor by reference to which a Welsh improvement authority has decided to measure its performance in exercising its functions; and
  - (b) a self-imposed performance standard is a standard which a Welsh improvement authority has decided to meet in relation to a self-imposed performance indicator.

## **14 Use of performance information**

- (1) A Welsh improvement authority must use the information it collects under section 13 to compare its performance in exercising the functions to which the information relates with—
  - (a) its performance in exercising those or similar functions during previous financial years; and
  - (b) so far as is reasonably practicable, the performance of other Welsh improvement authorities and other public authorities in exercising those or similar functions during the financial year to which the information relates and during previous financial years.
- (2) A Welsh improvement authority must—
  - (a) use the information it collects under section 13 to assess whether it could improve its performance in exercising its functions; and
  - (b) in the light of that assessment, decide what steps it will take with a view to improving its performance in exercising its functions.
- (3) In discharging its duty under this section and section 13 a Welsh improvement authority must have regard to any guidance issued by the Welsh Ministers.

## **15 Improvement planning and publication of improvement information**

- (1) A Welsh improvement authority must make arrangements in accordance with this section for the publication of the information described below.
- (2) The authority must make arrangements for the publication of—
  - (a) the authority’s assessment of its performance during a financial year—
    - (i) in discharging its duty under section 2;
    - (ii) in meeting the improvement objectives it has set itself under section 3 which are applicable to that year;
    - (iii) by reference to performance indicators specified under section 8(1)(a) and self-imposed performance indicators which are applicable to that year;
    - (iv) in meeting performance standards specified under section 8(1)(b) and self-imposed performance standards which are applicable to that year;
  - (b) the authority’s assessment of its performance in exercising its functions during a financial year as compared with—
    - (i) its performance in previous financial years; and
    - (ii) so far as is reasonably practicable, the performance during that and previous financial years of other Welsh improvement authorities and other public authorities (to the extent that those authorities exercise similar functions to those exercised by the authority);
  - (c) details of the ways in which the authority has during a financial year exercised its powers of collaboration for the purpose of discharging or facilitating the discharge of its duties under sections 2(1), 3(2) and 8(7) during that year;
  - (d) details of the information collected under section 13 in respect of a financial year and what the authority has done to discharge its duties under section 14 in relation to that year.
- (3) Those arrangements must be framed so that the information is published before—
  - (a) 31 October in the financial year following that to which the information relates; or
  - (b) such other date as the Welsh Ministers may specify by order.
- (4) The authority must make arrangements for the publication of a summary of any report in respect of the authority issued under section 22.
- (5) Those arrangements must be framed so that the summary is published before—
  - (a) 31 October in the financial year following that in which the report was issued; or
  - (b) such other date as the Welsh Ministers may specify by order.
- (6) The authority must make arrangements for the publication of a description of the authority’s plans for discharging its duties under sections 2(1), 3(2) and 8(7) in a financial year together with, if the authority thinks fit, its plans for subsequent years (an “improvement plan”).
- (7) Those arrangements must be framed so that the information is published—
  - (a) as soon as is reasonably practicable after the start of the financial year to which the plan must relate; or
  - (b) as soon as is reasonably practicable after such other date as the Welsh Ministers may specify by order.

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- (8) A Welsh improvement authority must have regard to any guidance issued by the Welsh Ministers about the discharge of its duties under this section.
- (9) Without prejudice to the generality of subsection (8), guidance issued under that subsection may address—
  - (a) the manner in which assessments of performance are to be carried out;
  - (b) the making of an improvement plan including the procedure to be followed.

#### *Relevant regulators and their functions*

### **16 Meaning of “relevant regulators” and “relevant functions”**

- (1) For the purposes of this Part, a “relevant regulator” is a person listed in subsection (2) and the regulator’s “relevant functions” are those specified in respect of the person in that subsection.
- (2) The relevant regulators and their relevant functions are as follows—
  - (a) Her Majesty’s Chief Inspector of Education and Training in Wales in the exercise of functions under section 38 of the Education Act 1997 (c. 44) (inspection of LEAs);
  - (b) the Welsh Ministers in the exercise of their functions under—
    - (i) sections 93, 94 and 95 of the Health and Social Care (Community Health and Standards) Act 2003 (c. 43) (reviews etc of the provision of social services);
    - (ii) regulations made under section 96 of that Act;
  - (c) a person appointed under section 28 of the Fire and Rescue Services Act 2004 (c. 21) (inspectors) in the exercise of the person’s functions under section 28(1) of that Act;
  - (d) the Welsh Language Board in the exercise of functions under section 17 of the Welsh Language Act 1993 (c. 38) (investigations);
  - (e) an auditor appointed under section 13 of the Public Audit (Wales) Act 2004 (c. 23) to audit the accounts of a Welsh improvement authority in the exercise of the function of carrying out the audit.
- (3) The Welsh Ministers may by order—
  - (a) amend or omit any paragraph of subsection (2);
  - (b) add additional paragraphs to that subsection;
  - (c) amend or omit such additional paragraphs.
- (4) Such an order may make such amendments of this Measure as appear to the Welsh Ministers to be necessary or expedient in connection with the provision made under subsection (3).
- (5) The Welsh Ministers must not make such an order unless they have consulted—
  - (a) persons appearing to them to represent Welsh improvement authorities;
  - (b) the Auditor General for Wales;
  - (c) where the order alters the relevant functions specified in respect of a relevant regulator, that regulator;
  - (d) where the order adds a person to the list of relevant regulators, that person.

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- (6) But subsection (5)(d) does not require the Welsh Ministers to have consulted a person established by or under any enactment if the enactment is not in force at the date on which the order is made.

### *Improvement audits and assessments*

#### **17 Improvement information and planning: audit**

In respect of each financial year, the Auditor General for Wales must carry out an audit for the purpose of determining—

- (a) whether a Welsh improvement authority has during that year discharged its duties under section 15(1) to (7); and
- (b) the extent to which the authority has during that year acted in accordance with any guidance issued under section 15(8).

#### **18 Improvement assessments**

- (1) In respect of each financial year, the Auditor General for Wales must carry out an assessment for the purpose of determining whether a Welsh improvement authority is likely during that year to comply with the requirements of this Part.
- (2) In conjunction with an assessment under subsection (1), the Auditor General may carry out an assessment for the purpose of determining whether the Welsh improvement authority is likely to comply with the requirements of this Part in subsequent financial years.

#### **19 Audit and assessment reports**

- (1) Each financial year, the Auditor General for Wales must issue a report or reports in respect of each Welsh improvement authority—
  - (a) certifying that the Auditor General has carried out an audit under section 17 in respect of the previous financial year;
  - (b) stating whether as a result of the audit the Auditor General believes—
    - (i) that the authority has discharged its duties under section 15(1) to (7); and
    - (ii) that the authority has acted in accordance with any guidance issued under section 15(8);
  - (c) certifying that the Auditor General has carried out an assessment under section 18 in respect of the financial year;
  - (d) describing the extent to which information and documents provided to the Auditor General under section 33 have been taken into account in carrying out that assessment;
  - (e) stating whether as a result of the assessment the Auditor General believes that the authority is likely to comply with the requirements of this Part during the financial year;
  - (f) if the Auditor General thinks it appropriate in the light of an audit or assessment, recommending action that the authority should take in order to comply with the requirements of this Part or act in accordance with guidance issued under section 15(8) (whether in respect of that or a subsequent financial year);

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- (g) if the Auditor General thinks it appropriate in the light of an audit or assessment, recommending that the Welsh Ministers should—
    - (i) provide assistance to the authority by exercising their power under section 28;
    - (ii) give a direction under section 29 and, if so, the type of direction;
  - (h) stating whether, in the light of an audit or assessment, the Auditor General is minded to carry out a special inspection under section 21.
- (2) The Auditor General must send a copy of any report issued under this section to the authority concerned and the Welsh Ministers.
- (3) Copies of a report must be sent in accordance with subsection (2)—
- (a) by 30 November in the financial year during which the audit was carried out or to which the assessment relates; or
  - (b) by such other date as the Welsh Ministers may specify by order.
- (4) But the Welsh Ministers may by direction set a date for the sending of a report in relation to a specified Welsh improvement authority which differs from the date which would otherwise apply under subsection (3) if—
- (a) the Auditor General for Wales has requested that the Welsh Ministers give such a direction; and
  - (b) in the opinion of the Welsh Ministers, the circumstances are exceptional.

## **20 Response to section 19 reports**

- (1) The following subsections apply where any report received by a Welsh improvement authority under section 19(2)—
- (a) contains a recommendation under section 19(1)(f) or (g); or
  - (b) states under section 19(1)(h) that the Auditor General for Wales is minded to carry out a special inspection.
- (2) The authority must prepare a statement of—
- (a) any action which it proposes to take as a result of the report; and
  - (b) its proposed timetable for taking that action.
- (3) A statement required by subsection (2) must be prepared—
- (a) before the end of the period of 30 working days starting with the day on which the authority receives the report; or
  - (b) if the report specifies a shorter period starting with that day, before the end of that period.
- (4) The authority must incorporate the statement in its improvement plan for the next financial year.
- (5) If the report recommends that the Welsh Ministers give a direction under section 29, the authority must send a copy of the statement to the Welsh Ministers—
- (a) before the end of the period of 30 working days starting with the day on which the authority receives the report; or
  - (b) if the report specifies a shorter period starting with that day, before the end of that period.
- (6) For the purposes of this section a working day is a day other than—

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- (a) a Saturday or Sunday;
- (b) Christmas Day or Good Friday; or
- (c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in England and Wales.

*Other functions of the Auditor General for Wales*

## 21 Special inspections

- (1) The Auditor General for Wales may carry out an inspection of a Welsh improvement authority's compliance with the requirements of this Part if—
  - (a) the Auditor General is of the opinion that the authority may fail to comply with the requirements of this Part; or
  - (b) any relevant regulator informs the Auditor General that, in the regulator's opinion, the authority may fail to comply with the requirements of this Part.
- (2) But the Auditor General must, before deciding whether to carry out an inspection—
  - (a) consult the Welsh Ministers; and
  - (b) in a case where the Auditor General has stated in a report under section 19(1)(h) that the Auditor General is minded to carry out a special inspection, consider any statement made by the authority in response in accordance with section 20(3).
- (3) An inspection under subsection (1) may relate to some or all of an authority's functions.
- (4) If the Welsh Ministers direct the Auditor General for Wales to carry out an inspection of compliance with the requirements of this Part by a Welsh improvement authority, the Auditor General must comply with the direction.
- (5) A direction under subsection (4) may relate to some or all of an authority's functions.
- (6) Before giving a direction under subsection (4), the Welsh Ministers must consult the Auditor General.
- (7) The Auditor General for Wales must notify a Welsh improvement authority if—
  - (a) the Auditor General decides to carry out an inspection of the authority under subsection (1); or
  - (b) the Welsh Ministers have directed the Auditor General to carry out an inspection of the authority under subsection (4).
- (8) The notification must specify the functions to which the inspection relates.
- (9) In carrying out an inspection, and, in the case of an inspection under subsection (1), deciding whether to do so, the Auditor General must have regard to any guidance issued by the Welsh Ministers.
- (10) For the purposes of this Part, an inspection under this section is referred to as a special inspection.
- (11) In this section a reference to an authority's functions includes a reference to arrangements made to facilitate or support the exercise of its functions.

## **22 Reports of special inspections**

- (1) Where the Auditor General for Wales has carried out a special inspection the Auditor General must issue a report.
- (2) A report—
  - (a) must mention any matter in respect of which the Auditor General believes as a result of the inspection that the authority is failing or may fail to comply with the requirements of this Part, and
  - (b) may, if it mentions a matter under paragraph (a), recommend that the Welsh Ministers do either or both of the following—
    - (i) provide assistance to the authority by exercising their power under section 28;
    - (ii) give a direction under section 29.
- (3) The Auditor General—
  - (a) must send a copy of a report to the authority concerned and the Welsh Ministers;
  - (b) if a report makes a recommendation under subsection (2)(b), must as soon as reasonably practicable arrange for the recommendation to be published; and
  - (c) may publish a report and any information in respect of a report.
- (4) If a report states that the Auditor General believes as a result of an inspection that a Welsh improvement authority is failing to comply with the requirements of this Part, the next improvement plan prepared by the authority must record—
  - (a) that fact, and
  - (b) any action taken, or to be taken, by the authority as a result of the report.
- (5) If a report relates to any extent to the administration of housing benefit or council tax benefit and the Auditor General thinks fit to do so, the Auditor General must as soon as reasonably practicable send a copy of the report to the Secretary of State.

## **23 Co-ordination of audit etc**

- (1) The relevant regulators and the Auditor General for Wales must have regard to the need for co-ordination in the exercise of regulatory functions.
- (2) “Regulatory functions” means the relevant functions of the relevant regulators and the functions of the Auditor General for Wales under subsection (7).
- (3) In relation to each financial year, the Auditor General for Wales must, after consulting the relevant regulators, produce a timetable for each Welsh improvement authority which sets out the Auditor General’s opinion as to the dates or times in that year at or during which—
  - (a) the relevant regulators should exercise their relevant functions in relation to the authority; and
  - (b) the Auditor General should exercise the functions referred to in subsection (7) in relation to the authority.
- (4) The duty under subsection (3) may be discharged by the production of a timetable which relates to more than one financial year.
- (5) In relation to a Welsh improvement authority, the relevant regulators in exercising their relevant functions and the Auditor General for Wales in exercising the functions

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referred to in subsection (7) must take all reasonable steps to adhere to the timetable produced in respect of the authority under subsection (3).

- (6) The Auditor General for Wales must assist the relevant regulators to comply with their duties under subsections (1) and (5).
- (7) The functions of the Auditor General for Wales referred to in subsection (2) are the Auditor General’s functions under—
  - (a) section 13 and 41 of the Public Audit (Wales) Act 2004; and
  - (b) sections 17 to 19 of this Measure.

## **24 Annual improvement reports**

- (1) In relation to each Welsh improvement authority, the Auditor General for Wales must produce a report (an “annual improvement report”) for each financial year which summarises or reproduces the reports described in subsection (2).
- (2) The reports are—
  - (a) each report issued in respect of the authority during that financial year under section 19;
  - (b) any report of a special inspection of the authority issued under section 22 during that financial year.
- (3) The Auditor General for Wales—
  - (a) must publish each Welsh improvement authority’s annual improvement report;
  - (b) must consider, in the light of an authority’s annual improvement report, whether to—
    - (i) make a recommendation to a relevant regulator as to how the regulator should exercise relevant functions in relation to the authority;
    - (ii) make a recommendation to the Welsh Ministers to provide assistance to the authority by exercising their power under section 28;
    - (iii) make a recommendation to the Welsh Ministers to give a direction to the authority under section 29;
    - (iv) exercise any of the Auditor General’s functions in relation to the authority;
  - (c) must make any such recommendation as is mentioned in paragraph (b)(i) to (iii) as the Auditor General considers ought to be made.

## **25 Statement of practice**

- (1) The Auditor General for Wales must prepare a statement of practice which describes the way in which the Auditor General intends to exercise the functions described in subsection (4).
- (2) The Auditor General must—
  - (a) keep the statement under review; and
  - (b) if the Auditor General considers it appropriate following a review, prepare a revised statement of practice.
- (3) The statement of practice must accord with the principles described in subsection (5).
- (4) The functions are those conferred upon the Auditor General by—

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- (a) section 17 (improvement information and planning: audit);
  - (b) section 18 (improvement assessments);
  - (c) section 19 (audit and assessment reports);
  - (d) section 23 (co-ordination of audit etc);
  - (e) section 24 (annual improvement reports).
- (5) The principles are—
- (a) that the Auditor General for Wales should exercise the Auditor General’s functions consistently as between different Welsh improvement authorities;
  - (b) that persons appointed under section 13 of the Public Audit (Wales) Act 2004 should discharge their responsibilities independently;
  - (c) that it is desirable that the relevant functions of the relevant regulators and the functions of the Auditor General described in section 23(7) are exercised proportionately so as not to impose an unreasonable burden upon Welsh improvement authorities;
  - (d) that the functions in subsection (4) should be exercised with a view to assisting Welsh improvement authorities to comply with the requirements of this Part.
- (6) The Auditor General for Wales must send a copy of a statement or revised statement prepared under subsection (1) to the Welsh Ministers for their approval.
- (7) If the statement or revised statement is approved by the Welsh Ministers, the Auditor General must publish the statement or the revised statement.
- (8) The Auditor General for Wales must have regard to the statement most recently published under subsection (7) in exercising the functions described in subsection (4).

## **26 Inspectors' powers and duties**

- (1) An inspector has a right of access at all reasonable times—
- (a) to any premises of a Welsh improvement authority, and
  - (b) to any document relating to the authority which appears to the inspector to be necessary for the purposes of the inspection, audit or assessment.
- (2) The right conferred by subsection (1) includes power to inspect, copy or take away the document.
- (3) An inspector—
- (a) may require a person holding or accountable for any such document to give the inspector such information or explanation as the inspector thinks necessary, and
  - (b) may require that person to attend before the inspector in person to give the information or explanation or to produce the document.
- (4) In relation to a document kept in electronic form, the power in subsection (3)(b) to require a person to produce a document includes power to require it to be produced in a form in which it is legible and can be taken away.
- (5) In connection with inspecting such a document, an inspector—
- (a) may obtain access to, and inspect and check the operation of, any computer and associated apparatus or material which the inspector considers is or has been used in connection with the document;

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- (b) may require a person within subsection (6) to afford the inspector such reasonable assistance as the inspector may require for that purpose.
- (6) A person is within this subsection if the person is—
  - (a) the person by whom or on whose behalf the computer is or has been used; or
  - (b) a person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material.
- (7) A Welsh improvement authority must provide an inspector with every facility and all information which the inspector may reasonably require for the purposes of the inspection or assessment.
- (8) An inspector must—
  - (a) unless in the opinion of the inspector the circumstances are exceptional, give three clear days' notice of any requirement under this section, and
  - (b) if so required, produce documentation which identifies the inspector as a person authorised to impose requirements under this section.
- (9) A person who without reasonable excuse obstructs the exercise of any power conferred by this section or fails to comply with a requirement of an inspector under this section is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (10) Any expenses incurred by an inspector in proceedings for an offence under subsection (9) alleged to have been committed in relation to an inspection of a Welsh improvement authority are, so far as not recoverable from any other source, recoverable from the authority.
- (11) In this section “inspector” means the Auditor General for Wales, a member of the Auditor General’s staff or a person providing services to the Auditor General, who is carrying out an audit under section 17, an assessment under section 18 or a special inspection.

## **27 Fees**

- (1) The Auditor General for Wales must prescribe scales of fees in respect of—
  - (a) audits carried out under section 17;
  - (b) assessments carried out under section 18;
  - (c) special inspections.
- (2) Different scales may be prescribed in respect of the different activities described in subsection (1), different types of the same activity and different types of Welsh improvement authority.
- (3) An authority audited, assessed or inspected as mentioned in subsection (1) must, subject to subsection (4), pay to the Auditor General for Wales the fee payable under the appropriate scale.
- (4) If it appears to the Auditor General that the work involved in a particular audit, assessment or inspection was substantially more or less than that envisaged by the appropriate scale, the Auditor General for Wales may charge a fee which is larger or smaller than that referred to in subsection (3).
- (5) Before prescribing a scale of fees under this section the Auditor General must consult—

- (a) the Welsh Ministers, and
  - (b) persons appearing to the Auditor General to represent authorities which may be audited, assessed or inspected as mentioned in subsection (1).
- (6) Section 21 of the Public Audit (Wales) Act 2004 (fees prescribed by Assembly) shall have effect in relation to a scale or scales of fees prescribed by the Auditor General under this section as it has effect in relation to a scale or scales prescribed under section 20(1) of that Act, but subject to the following modifications—
- (a) in subsections (3) and (4) of section 21, for “section 20(4) and (5)” there is substituted “section 27(3) and (4) of the Local Government (Wales) Measure 2009”;
  - (b) subsection (5)(c) is omitted.

### *The Welsh Ministers*

## **28 Welsh Ministers: support for Welsh improvement authorities**

- (1) If they have complied with subsection (3), the Welsh Ministers may do anything which they consider is likely to assist a Welsh improvement authority to comply with the requirements of this Part.
- (2) The power under subsection (1) includes power—
- (a) to enter into arrangements or agreements with any person;
  - (b) to co-operate with, or facilitate or co-ordinate the activities of, any person;
  - (c) to exercise on behalf of any person any functions of that person;
  - (d) to provide staff, goods, services or accommodation to any person.
- (3) Unless they are exercising the power under subsection (1) in response to a request made under subsection (4), the Welsh Ministers must, before exercising that power, consult—
- (a) the Welsh improvement authority or authorities whom they propose to assist by the exercise of the power; and
  - (b) those persons who appear to the Welsh Ministers to be key stakeholders affected by the exercise of the power referred to in subsection (1).
- (4) If a Welsh improvement authority asks them to do so, the Welsh Ministers must consider whether to exercise their power under subsection (1).

## **29 Welsh Ministers: powers of direction etc**

- (1) This section applies in relation to a Welsh improvement authority if the Welsh Ministers are satisfied as to any of the following—
- (a) that—
    - (i) the authority has been the object of the exercise by the Welsh Ministers of their power under section 28 for the purpose of assisting the authority to comply with any of the requirements of this Part; and
    - (ii) the authority is failing, or is likely to fail, to comply with any of the requirements of this Part and that failure, or likely failure, concerns a requirement mentioned in sub-paragraph (i);
  - (b) that—

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- (i) the authority is failing, or is likely to fail, to comply with any of the requirements of this Part; and
    - (ii) the urgency of the situation or the potential consequences of the failure, or likely failure, are such that it is appropriate to exercise a power under this section despite the Welsh Ministers not having exercised their power under section 28 for the purpose of assisting the authority to comply with those requirements; or
  - (c) that—
    - (i) the authority is failing, or is likely to fail, to comply with any of the requirements of this Part;
    - (ii) the Welsh Ministers have decided that they wish to exercise their power under section 28 for the purpose of assisting the authority to comply with those requirements; and
    - (iii) the power under section 28 cannot be exercised effectively because the authority has failed to co-operate with the Welsh Ministers.
- (2) Where this section applies in relation to a Welsh improvement authority, the Welsh Ministers may direct it to do all or any of the following—
  - (a) prepare or amend an improvement plan or to follow specified procedures in relation to such a plan;
  - (b) carry out a review of its exercise of specified functions;
  - (c) enter into specified collaboration arrangements with another Welsh improvement authority;
  - (d) set specified improvement objectives for itself under section 3.
- (3) Where this section applies in relation to a Welsh improvement authority, the Welsh Ministers may direct a local inquiry to be held into the exercise of specified functions of the authority.
- (4) Subsections (2) to (5) of section 250 of the Local Government Act 1972 (inquiries) shall apply in relation to an inquiry which the Welsh Ministers direct to be held under this section as they apply in relation to an inquiry caused to be held under that section.
- (5) Where this section applies in relation to a Welsh improvement authority the Welsh Ministers may direct the authority to take any action which the Welsh Ministers consider necessary or expedient to secure its compliance with the requirements of this Part.
- (6) Where this section applies in relation to a Welsh improvement authority the Welsh Ministers may direct—
  - (a) that a specified function of the authority must be exercised by the Welsh Ministers or a person nominated by them for a period specified in the direction or for so long as the Welsh Ministers consider appropriate; and
  - (b) that the authority must comply with any instructions of the Welsh Ministers or their nominee in relation to the exercise of that function and must provide such assistance as the Welsh Ministers or their nominee may require for the purpose of exercising the function.
- (7) The Welsh Ministers may by regulations make provision which—
  - (a) relates to an enactment which confers a function on them in respect of a function of a Welsh improvement authority; and

- (b) they consider necessary or expedient for the purposes of cases in which they make a direction under subsection (6)(a).
- (8) Regulations under subsection (7) may, in relation to the cases mentioned in subsection (6)(b)—
  - (a) disapply or modify an enactment of the kind mentioned in subsection (7)(a);
  - (b) have an effect similar to the effect of an enactment of that kind.
- (9) A direction given under this section—
  - (a) shall be enforceable by mandatory order on the application of the Welsh Ministers;
  - (b) may be published, in whole or in part, by the Welsh Ministers.

### **30 Powers of direction: collaboration arrangements**

- (1) This section applies to a Welsh improvement authority to which section 29 does not apply.
- (2) Having first consulted the authority, the Welsh Ministers may direct the authority to enter into specified collaboration arrangements with a Welsh improvement authority to which section 29 does apply.
- (3) A direction given under this section shall be enforceable by mandatory order on the application of the Welsh Ministers.

### **31 Power of Welsh Ministers to modify enactments and confer new powers**

- (1) If the Welsh Ministers think that an enactment prevents or obstructs compliance by Welsh improvement authorities with the requirements of this Part they may by order make provision modifying or excluding the application of the enactment in relation to—
  - (a) all Welsh improvement authorities;
  - (b) particular Welsh improvement authorities; or
  - (c) particular descriptions of Welsh improvement authority.
- (2) The Welsh Ministers may by order make provision conferring on—
  - (a) all Welsh improvement authorities;
  - (b) particular Welsh improvement authorities; or
  - (c) particular descriptions of Welsh improvement authority,any power which they consider necessary or expedient to permit or facilitate compliance with the requirements of this Part.
- (3) An order under this section may—
  - (a) impose conditions on the exercise of any power conferred by the order (including conditions about consultation or approval);
  - (b) amend an enactment.
- (4) In exercising a power conferred under subsection (2) a Welsh improvement authority must have regard to any guidance issued by the Welsh Ministers.
- (5) In this section “enactment” includes subordinate legislation (within the meaning of section 21 of the Interpretation Act 1978).

## **32 Orders under section 31: procedure**

- (1) Before the Welsh Ministers make an order under section 31 they must consult such authorities or persons as appear to them to be representative of interests affected by their proposals.
- (2) If, following consultation under subsection (1), the Welsh Ministers propose to make an order under section 31 they must lay before the National Assembly for Wales a document explaining their proposals and, in particular—
  - (a) setting out their proposals in the form of a draft order; and
  - (b) giving details of consultation under subsection (1).
- (3) Where a document relating to proposals is laid before the National Assembly for Wales under subsection (2), a draft of an order under section 31 to give effect to the proposals (with or without modification) must not be laid before the Assembly until after the expiry of the period of sixty days beginning with the day on which the document was laid.
- (4) In calculating the period mentioned in subsection (3) no account shall be taken of any time during which the National Assembly is dissolved or is in recess for more than four days.
- (5) In preparing a draft order under section 31 the Welsh Ministers must consider any representations made during the period mentioned in subsection (3).
- (6) A draft order laid before the National Assembly for Wales in accordance with section 50(6) must be accompanied by a statement of the Welsh Ministers giving details of—
  - (a) any representations considered in accordance with subsection (5), and
  - (b) any changes made to the proposals contained in the document laid before the National Assembly for Wales under subsection (2) above.
- (7) Nothing in this section applies to an order under section 31 which is made only for the purpose mentioned in section 50(7).

### *Miscellaneous and supplemental*

## **33 Information sharing**

- (1) For the purposes of this section, the “information sharing group” means the relevant regulators and the Auditor General for Wales.
- (2) A member of the information sharing group may, for the purpose of the exercise of its relevant functions, request that another member of the group provide it with specified information or documents.
- (3) A member of the information sharing group must comply with a request made under subsection (2) in so far as—
  - (a) the request relates to information obtained by, or documents produced to, that member in the course of the exercise of its relevant functions; and
  - (b) it is reasonably practicable to do so.
- (4) The relevant functions of a member of the information sharing group are—
  - (a) in the case of a relevant regulator, its relevant functions under section 16;

- (b) in the case of the Auditor General for Wales, the functions mentioned in section 23(7).

### **34 Use of information by regulators**

A relevant regulator may use any information the regulator obtains, or documents produced to the regulator, in the course of exercising any relevant function for the purposes of the regulator's functions under this Measure.

### **35 Part 1: interpretation**

- (1) For the purposes of this Part—

“collaboration arrangements” (“*trefniadau cydlafurio*”) means an activity performed in the exercise of a Welsh improvement authority's powers of collaboration;

“financial year” (“*blwyddyn ariannol*”) means a year beginning with 1 April;

“improvement plan” (“*cynllun gwella*”) means the plan referred to in section 15(6);

“powers of collaboration” (“*pŵerau cydlafurio*”) has the meaning given by section 11(1);

“relevant functions” (“*swyddogaethau perthnasol*”), in relation to a relevant regulator, means the functions specified in respect of the regulator in section 16(2);

“relevant regulator” (“*rheoleiddiwr perthnasol*”) means a person mentioned in section 16(2);

“special inspection” (“*arolygiad arbennig*”) has the meaning given by section 21;

“Welsh fire and rescue authority” (“*awdurdod tân ac achub Cymreig*”) has the meaning given by section 1(c);

“Welsh improvement authority” (“*awdurdod gwella Cymreig*”) has the meaning given by section 1.

- (2) For the purposes of this Part, unless the context otherwise requires, a reference to the exercise of a function by a Welsh improvement authority includes a reference to the carrying out of connected acts (such as the making of administrative arrangements).

### **36 Finance**

- (1) Section 33 of the Local Government Act 1999 (finance) is amended as follows.

- (2) In subsection (3)—

- (a) replace “National Assembly for Wales” with “Welsh Ministers”;
- (b) at the end of paragraph (b) insert “or the Local Government (Wales) Measure 2009”.