

PUBLIC AUDIT (WALES) ACT 2004

EXPLANATORY NOTES

TERRITORIAL EXTENT AND DEVOLUTION

Part 1: Auditor General for Wales

New Functions of the Auditor General for Wales

Section 1: Transfer of functions of Assembly

7. This section adds a new section 146A to the GOWA. Section 146A enables the Assembly, with the consent of the Auditor General, by order to transfer any of its supervisory functions in respect of a public body or a registered social landlord in Wales to the Auditor General or to provide that such a function is to be exercised on the Assembly's behalf by the Auditor General. "Supervisory functions" are defined as examining, inspecting, reviewing or studying the financial or other management of the body or the way in which it discharges any of its functions. With the abolition of Tai Cymru the Assembly assumed managerial audit and inspection functions in respect of registered social landlords in Wales. Part of the audit and inspection process is to gauge the extent to which registered social landlords achieve value for money in the exercise of their functions. This is an example of a function that could be transferred to the Auditor General under section 146A of the GOWA. The Assembly may direct the Auditor General to prepare a report on his exercise of functions that are transferred to him (section 146A(3) of the GOWA). The Auditor General is required to lay such a report before the Assembly.

Section 2: Additional functions of Auditor General

8. This section adds new sections 96A, 96B and 96C to the GOWA.
9. Section 96A of the GOWA enables the Auditor General, where he thinks that it is in the public interest to do so, to prepare a report on a matter coming to his attention in the course of examining accounts for which he has audit responsibility (except where he undertakes the audit under section 96(3)(a) of the GOWA). The Auditor General also has the power to prepare such a report in relation to matters coming to his attention when he is undertaking an economy, efficiency and effectiveness examination or study (other than one undertaken at the request of the body to which the examination or study relates). The Auditor General must lay such a report before the Assembly. Section 96A of the GOWA is similar to the power of an auditor appointed by the Audit Commission under section 8 of the ACA to make a public interest report in respect of health and local government bodies in England. The power in section 8 of the ACA is replicated in section 22 of this Act as a power for auditors appointed by the Auditor General in respect of local government bodies in Wales.
10. Section 96B of the GOWA provides that the Auditor General must, where required by a body in respect of which he has audit responsibilities (including local government bodies in Wales), make arrangements for the certification of claims, returns or accounts in respect of grants, subsidies and certain other payments made to the body. The

section also makes provision for a local government body to require the Auditor General to make arrangements in respect of certifying, under local government finance legislation, the body's calculation of its contribution to the non-domestic rating pool for a financial year and section 66 and Schedule 2 to the Act make minor and consequential amendments to the Local Government Finance Act 1988 for this purpose.

11. Section 96C of the GOWA provides further ancillary powers for the Auditor General. Section 96C(1) of the GOWA enables the Auditor General (or a member of his staff), by arrangement, to exercise the functions of any relevant authority (i.e. any government department, any local or other public authority or the holder of any public office) and to provide them with administrative, professional or technical services. It also enables any relevant authority to provide the Auditor General with administrative, professional or technical services. Section 96C(2) of the GOWA provides that where the Auditor General exercises a function of a relevant authority (under section 96C(1) of the GOWA) the relevant authority continues to have responsibility for the way in which that function is exercised.
12. Section 96C(3) of the GOWA enables the Auditor General to make arrangements with a relevant authority, an accountancy body or a qualified auditor (and enables such authorities, bodies or persons to make arrangements with the Auditor General) to co-operate with and give assistance to each other if the Auditor General and the authority, body or person concerned consider that it would be conducive to or would facilitate the exercise of their respective functions.
13. Sections 96C(1) and (3) of the GOWA are intended to facilitate joint working and co-operation between the Auditor General, his staff and a wide variety of other (e.g. regulatory) bodies (including bodies that are not situated in the United Kingdom). For instance, under this section the Auditor General could participate in joint reviews with the Assembly Social Services Inspectorate. In addition, where the Auditor General is exercising his audit functions in relation to a particular person/body he may, at the request of a relevant authority, enter into an arrangement with that authority to exercise, at the same time, the functions (or some of the functions) of the relevant authority in relation to that person/body. Section 96C(4) of the GOWA enables the Auditor General to recover his costs for or to pay for the provision of services by or to him under section 96C(1) and (3) of the GOWA, as the case may be.

Accountability of certain public bodies in Wales

Section 3: Studies for improving economy etc in services

14. This section adds a new section 145A to the GOWA. Section 145A(1) of the GOWA enables the Auditor General to undertake or promote studies (including comparative studies) designed to enable him to make recommendations for improving economy, efficiency and effectiveness in the discharge of the functions of the bodies to which the section relates. Such studies may also result in the Auditor General making recommendations for improving the financial or other management of any such body or bodies.
15. The Auditor General may also undertake or promote other studies relating to the provision of services by such bodies. When undertaking such a study the Auditor General may have regard to factors such as the impact of statutory provisions on the provision of the service by the body in question. Section 145A of the GOWA enables the Auditor General to undertake forward looking studies. The power of the Auditor General to undertake or promote comparative studies is similar to the Audit Commission's power under section 33 of the ACA. Where the Auditor General carries out such a study at the request of any person (other than the Assembly) then the Auditor General may charge that person a fee (see paragraphs 22 to 27 below – new section 93A of the GOWA). This section does not entitle the Auditor General to question the merits of the policy objectives of a body to which this section relates. The Auditor General

may lay his report containing the results of the study and his recommendations (if any) before the Assembly.

16. In relation to studies under section 145A of the GOWA, the Auditor General has the same rights of access to information and documents etc. as he has in relation to audit and other examinations into the economy, efficiency and effectiveness with which any person has used his resources in discharging his functions. These rights of access etc, as substituted by section 11 of this Act, are set out in section 95 of the GOWA (see paragraphs 35 to 41 below). Section 145A(4) of the GOWA requires the Auditor General to take into account the views of the Assembly's Audit Committee when deciding which studies to undertake or promote under this section. This duty corresponds to similar duties imposed on the Auditor General in relation to his value for money functions under the GOWA (e.g. sections 100 and 145).

Section 4: Studies at request of educational bodies

17. This section adds a new section 145B to the GOWA. Section 145B(1) of the GOWA enables the Auditor General, at the request of certain bodies, to undertake studies, in respect of certain educational bodies in the higher and further education sectors in Wales, which are designed to enable the Auditor General to make recommendations for improving economy, efficiency and effectiveness in the discharge of the functions of the body to which the study relates. Such studies may also include recommendations for improving the financial or other management of any such body or bodies. Section 145B(4) of the GOWA enables the Auditor General to advise the Higher Education Funding Council for Wales in relation to the exercise of certain of its functions. Section 145B(5) of the GOWA enables the Auditor General to advise higher and further education corporations in Wales on the appointment of auditors. In addition, with his agreement one or more members of his staff may be appointed, by such a corporation, to be the auditor(s) of the corporation's accounts. This is an equivalent power to that in section 36 of the ACA which applies in respect of similar bodies in England. Section 145B(2) of the GOWA provides that the power of the Auditor General under this section does not entitle him to question the merits of the policy objectives of the body/bodies subject to the study.

Section 5: Studies relating to registered social landlords

18. This section adds a new section 145C to the GOWA. Section 145C(1) of the GOWA provides that the Auditor General and the Assembly may agree on one or more programmes of studies (including comparative studies) designed to enable the Auditor General to make recommendations for improving the economy, efficiency and effectiveness in the discharge of the functions of registered social landlords in Wales. Such studies may also include recommendations for improving the financial or other management of registered social landlords. Section 145C(4) of the GOWA provides that the Auditor General may not question the merits of the policy objectives of the registered social landlords that are the subject of the study.
19. By virtue of section 145C(3) of the GOWA, the Assembly must reimburse the Auditor General the full cost of undertaking the programme of studies under section 145C(1) of the GOWA. In relation to studies under section 145C(1) of the GOWA, the Auditor General has the same rights of access to information and documents etc. as he has in relation to audit and other examinations into the economy, efficiency and effectiveness with which any person has used his resources in discharging his functions. These rights of access etc. as substituted by section 11 of this Act are set out in section 95 of the GOWA (see paragraphs 35 to 41 below). Failure, without reasonable excuse, to comply with a requirement of the Auditor General under substituted section 95(3)(a) or (b) of the GOWA constitutes a criminal offence under section 145C(6) and on summary conviction a person guilty of that offence is liable to a fine not exceeding level 3 on the standard scale. These powers are similar to those in sections 40 and 41 of the ACA

except that, in respect of section 145C of the GOWA, the Auditor General has the wider rights of access to information and documents etc, referred to above.

Funding of Auditor General

Section 6: Expenses and accounts

20. This section amends section 93 of the GOWA. Section 6(3) inserts a new subsection (2A) into section 93 of the GOWA which gives the Auditor General the power to borrow money (sterling), by way of overdraft or otherwise, to cover an actual or anticipated temporary excess of expenditure over available income. The Audit Commission has a power to borrow under paragraph 9 of Schedule 1 of the ACA and the provision is similar to that available to the Auditor General of Scotland under paragraph 6(2)(d) of Schedule 2 to the Public Finance and Accountability (Scotland) Act 2000.
21. In order to safeguard the constitutional independence and democratic accountability of local government in Wales, section 6(4) adds a new subsection (6A) to section 93 of the GOWA. This provides that the Assembly's Audit Committee cannot examine or seek to modify the Auditor General's estimate of the income and expenses of his office (which he is required to submit to the Audit Committee by virtue of section 93(4) of the GOWA) insofar as that estimate relates to the estimated income and expenditure of his office in relation to Part 2 of the Act (local government bodies in Wales).

Section 7: Fees

22. Section 93(3) of the GOWA (power of the Auditor General to charge a fee for auditing accounts) is repealed by virtue of section 72 of and Schedule 4 to the Act. Section 7 adds a new section 93A to the GOWA which makes further provision for the Auditor General to charge fees.
23. Section 93A(1) empowers the Auditor General to charge a fee for auditing accounts.
24. Section 61(3)(b) of the Act provides that where the Auditor General audits the accounts of a Welsh NHS body (under section 61(2) of the Act), the Auditor General must satisfy himself that the body has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources. The fee that the Auditor General may charge under section 93A(1) of the GOWA may include an element to cover that part of the examination that he is required to do by virtue of section 61(3)(b) of the Act.
25. Section 93A(2) provides that where, upon request, he undertakes (in accordance with section 96(3)(b) of the GOWA) an examination into the economy, efficiency and effectiveness with which a person has used his resources in discharging his functions, the Auditor General may charge that person a fee (not exceeding the full cost of the service). Where the Auditor General undertakes a study under section 145A of the GOWA at the request of any person (other than the Assembly) then he may charge that person a fee (not exceeding the full cost of the service).
26. Section 93A(3) provides that where the Auditor General provides a service to a body under section 96B of the GOWA (see paragraph 10 above – section 2) he must charge that body a fee (which recovers the full cost of providing the service). If the Auditor General provides services at the request of a body under section 145B of the GOWA (educational bodies in Wales) or section 44 of the Act (local government bodies in Wales) then he must charge that body a fee (which recovers the full cost of providing the service).
27. This section does not affect the provisions of section 93(1) of the GOWA whereby the Assembly is to meet the Auditor General's expenses insofar as they cannot be met out of income received by him or met by virtue of the Auditor General's power to borrow money (see note on section 6(3) above).

28. **Section 20** of the Act deals with the fee arrangements in respect of audit work with regard to local government bodies in Wales.

Administrative matters

Section 8: Auditor General's seal

29. This section inserts new subsections (8) and (9) into section 90 of the GOWA and makes provision for the Auditor General to use an official seal by which he can authenticate and evidence the execution of documents signed by him, or on his behalf: for instance, in relation to the acquisition or disposal of rights in property (e.g. land).

Section 9: Staff etc of the Auditor General

30. This section amends section 92 of the GOWA which sets out the arrangements by which the Auditor General may secure the services of staff and delegate the exercise of his functions to support him in his work. As amended, section 92 of the GOWA no longer requires him to consider arrangements with the National Audit Office for the provision of administrative, professional or technical services as a first option. He may, however, still make arrangements in this respect under the provisions of section 96C(1) and (3) of the GOWA (see paragraphs 11 to 13 above - section 2).
31. Section 9(2) of the Act also removes the prohibition on the Assembly and the Auditor General (and their staff) entering into an arrangement to exercise each others' functions or provide administrative, professional or technical services to each other. The Assembly and the Auditor General may now enter into such an arrangement under section 96C(1) and (3) of the GOWA. It is the intention that the Wales Audit Office will develop protocols to ensure that no conflict of interest may arise.
32. **Section 9(3)** ensures that the Auditor General pays to the Minister for the Civil Service any increase in superannuation contributions (that may be determined under the Superannuation Act 1972) in respect of his staff.
33. Section 9(4) of the Act replaces subsection (8) of and adds new subsections (8A) and (8B) to section 92 of the GOWA. Section 9(6) adds new subsection (9A) to section 92. These provisions enable any function of the Auditor General to be exercised by a member of his staff or a person providing services to him. The Auditor General may also exercise a function jointly with a person (e.g. with another regulatory body) providing services to him. In both instances however, the function remains the responsibility of the Auditor General. The Auditor General may only authorise a person (to whom section 92(8) applies) to certify or report on the accounts referred to in subsection (9A) if the Presiding Officer of the Assembly has certified to the Assembly that the Auditor General is unable to certify or report on those accounts himself. Any authority for a person other than the Auditor General to certify or report on accounts expires if the office of Auditor General falls vacant.

Section 10: Accounting Officer

34. **Section 10** of the Act adds a new section 94A to the GOWA. Section 94A(1) of the GOWA designates the Auditor General as the Accounting Officer for the Wales Audit Office and as such he has responsibility for things such as the regularity and propriety of its work and the economic, efficient and effective management of its functions. His responsibilities as Accounting Officer will also include those specified from time to time by the Assembly's Audit Committee. These responsibilities will include responsibilities owed to the Audit Committee itself or to the House of Commons or its Committee of Public Accounts.

Section 11: Access to information, etc by Auditor General

35. **Section 11** substitutes section 95 of the GOWA. The substituted section 95 enhances the right of access of the Auditor General to documents and information etc. in the light of the recommendations in Lord Sharman of Redlynch's report - "Holding to Account - the Review of Audit and Accountability for Central Government (February 2001)". The substituted section 95(1) of the GOWA provides that the Auditor General has, at all reasonable times, a right of access to every document relating to a relevant person which appears to him necessary for:-
- his examination of any auditable accounts;
 - undertaking economy, efficiency and effectiveness studies under sections 145A and 145C of the GOWA;
 - his functions of carrying out any other examination or study into the economy, efficiency and effectiveness with which any person has used their resources in discharging their functions.
36. A "relevant person" for the purposes of the substituted section 95 of the GOWA is a person by whom the auditable accounts are prepared or where relevant, the person to whom the study or examination relates. In the case of auditable accounts that the National Assembly may be directed by HM Treasury, under section 97 of GOWA, to prepare the relevant person is the person to whose financial affairs and transactions the accounts relate.
37. Substituted section 95(2) of the GOWA makes it clear that the enhanced power of access to documents enables the Auditor General to have access to documents in a financial chain relating to the use of public money. For instance an Assembly Sponsored Public Body (i.e. the equivalent, in Wales, of a Non-Departmental Public Body in England) may (in accordance with its own specific powers) use grant-in-aid paid to it by the Assembly to provide a grant, loan or guarantee to a third party. The Assembly Sponsored Public Body may contract with another organisation to provide a service to it and certain components of this service may in turn be sub-contracted. Substituted section 95 of the GOWA entitles the Auditor General, if necessary, to have access to documents and the benefit of assistance, information and explanation in respect of any of these transactions. The aim of this provision is to ensure, for example, that regularity, propriety and the principles of value for money are applied to the use of public money.
38. By virtue of the substituted section 95(2)(c) of the GOWA, 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 Auditor General's right of access under substituted section 95 of the GOWA will apply. Before making such an order, the Assembly must consult HM Treasury and the Auditor General. The Assembly may use this power in order to extend the description of documents etc. that the Auditor General may access in order to trace the use of public funds. For example, if the Auditor General is auditing the accounts of or carrying out a value for money exercise in relation to the Assembly, the Auditor General may need to have access to documents relating to the use of funds paid by grant-in-aid to an Assembly Sponsored Public Body. If that body had itself provided financial assistance to Company X and Company X had contracted with contractor A who in turn had sub-contracted with contractor B, the Assembly may make an order to ensure that the Auditor General could have access, if necessary, to such documents held by contractor B.
39. There will be some cases where the Auditor General undertakes specific work (e.g. value for money studies under section 145B(1) of the GOWA) at the request of the person/body to whom the work relates. In such cases, the statutory right of access may not apply and the Auditor General will need to agree access rights with the person/body to whom the work relates.

*These notes refer to the Public Audit (Wales) Act 2004
(c.23) which received Royal Assent on 16 September 2004*

40. The Auditor General may, under substitute section 95(3)(a) and (b) of the GOWA, require a person whom he thinks has information, which relates to a relevant person or a person who holds or controls a document to which his right of access under substituted section 95(1) of the GOWA applies or which relates to the document itself to:-
- give him any assistance, information and explanation which the Auditor General thinks necessary for the purpose of the examination or study that he is undertaking;
 - attend before him in person for the purposes of providing the assistance, information or explanation or to produce the documents.
41. The Auditor General also has the power under substituted section 95(3)(c) of the GOWA to require such a person to provide him with any facility that the Auditor General may reasonably require. This entitles the Auditor General to such things as adequate accommodation, lighting, heating, access to relevant computer hardware and software etc. to enable him to do his work. Furthermore, for the purposes of an examination of auditable accounts the Auditor General can require a relevant person to provide him with accounts of such of the relevant person's transactions as the Auditor General may specify (substituted section 95(5) of the GOWA).