



Public Audit (Wales) Act 2004

2004 CHAPTER 23

PART 2

LOCAL GOVERNMENT BODIES IN WALES

CHAPTER 1

ACCOUNTS AND AUDIT

Prevention of unlawful expenditure etc

33 Advisory notices

- (1) [^{F1}The Auditor General for Wales] may issue a notice under this section (an “advisory notice”) if he has reason to believe that one or more of the requirements specified in subsection (2) is met [^{F2}in respect of a local government body in Wales].
- (2) The requirements are that—
 - (a) the body or an officer of the body is about to make or has made a decision which involves or would involve the body incurring expenditure which is unlawful;
 - (b) the body or an officer of the body is about to take or has begun to take a course of action which, if pursued to its conclusion, would be unlawful and likely to cause a loss or deficiency;
 - (c) the body or an officer of the body is about to enter an item of account, the entry of which is unlawful.
- (3) For the purposes of this section and section 34 the actions of any of these are to be treated as the actions of a body—
 - (a) a committee or sub-committee of the body;
 - (b) a person (other than an officer of the body) authorised to act on behalf of the body.

Changes to legislation: There are currently no known outstanding effects for the Public Audit (Wales) Act 2004, Cross Heading: Prevention of unlawful expenditure etc. (See end of Document for details)

- (4) An advisory notice is a notice which meets these requirements—
 - (a) it is addressed to the body or officer;
 - (b) it specifies which of the requirements specified in subsection (2) is met and the decision, course of action or item of account to which the notice relates;
 - (c) it specifies that the notice will take effect on the day a copy of it is served on the person to whom it is addressed;
 - (d) it requires the body or officer to give [^{F3}the Auditor General for Wales] not less than the specified period of notice in writing of the intention of the body or officer to—
 - (i) make or implement the decision to which the notice relates,
 - (ii) take or continue to take the course of action to which the notice relates, or
 - (iii) enter the item of account to which the notice relates.
- (5) For the purposes of subsection (4)(d) the specified period of notice is the period (not exceeding 21 days) specified in the advisory notice.
- (6) A copy of an advisory notice—
 - (a) must be served on the body to which, or to an officer of which, it is addressed;
 - (b) if the notice is addressed to an officer, must be served on him;
 - (c) may be served on any other person considered appropriate by [^{F4}the Auditor General for Wales].
- (7) [^{F5}The Auditor General for Wales] must before the end of the required period serve a statement of his reasons for the belief referred to in subsection (1) on—
 - (a) the body, and
 - (b) if the advisory notice is addressed to an officer of the body, the officer.
- (8) The required period for the purposes of subsection (7) is 7 days starting on the day on which a copy of the advisory notice was served on the person to whom it is addressed.
- (9) A document to be served on an officer of a body under this section must be served on him by addressing it to him and—
 - (a) delivering it to him at an office of the body at which he is employed,
 - (b) leaving it at such an office, or
 - (c) sending it by post to such an office.
- (10) An advisory notice may at any time be withdrawn by [^{F6}the Auditor General for Wales].
- (11) [^{F7}The Auditor General for Wales] must give notice in writing of the withdrawal to any body or person on whom a copy of the advisory notice was served under subsection (6).

^{F8}(12)

Textual Amendments

F1 Words in s. 33(1) substituted (1.4.2014) by Public Audit (Wales) Act 2013 (anaw 3), s. 35(2), **Sch. 4 para. 38(2)(a)** (with Sch. 3 paras. 2, 3); S.I. 2013/1466, art. 3(1)

F2 Words in s. 33(1) inserted (1.4.2014) by Public Audit (Wales) Act 2013 (anaw 3), s. 35(2), **Sch. 4 para. 38(2)(b)** (with Sch. 3 paras. 2, 3); S.I. 2013/1466, art. 3(1)

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- F3** Words in s. 33(4)(d) substituted (1.4.2014) by Public Audit (Wales) Act 2013 (anaw 3), s. 35(2), **Sch. 4 para. 38(3)** (with Sch. 3 paras. 2, 3); S.I. 2013/1466, art. 3(1)
- F4** Words in s. 33(6)(c) substituted (1.4.2014) by Public Audit (Wales) Act 2013 (anaw 3), s. 35(2), **Sch. 4 para. 38(4)** (with Sch. 3 paras. 2, 3); S.I. 2013/1466, art. 3(1)
- F5** Words in s. 33(7) substituted (1.4.2014) by Public Audit (Wales) Act 2013 (anaw 3), s. 35(2), **Sch. 4 para. 38(5)** (with Sch. 3 paras. 2, 3); S.I. 2013/1466, art. 3(1)
- F6** Words in s. 33(10) substituted (1.4.2014) by Public Audit (Wales) Act 2013 (anaw 3), s. 35(2), **Sch. 4 para. 38(6)** (with Sch. 3 paras. 2, 3); S.I. 2013/1466, art. 3(1)
- F7** Words in s. 33(11) substituted (1.4.2014) by Public Audit (Wales) Act 2013 (anaw 3), s. 35(2), **Sch. 4 para. 38(7)** (with Sch. 3 paras. 2, 3); S.I. 2013/1466, art. 3(1)
- F8** S. 33(12) omitted (1.4.2014) by virtue of Public Audit (Wales) Act 2013 (anaw 3), s. 35(2), **Sch. 4 para. 38(8)** (with Sch. 3 paras. 2, 3); S.I. 2013/1466, art. 3(1)

34 Effect of an advisory notice

- (1) Subsections (2) to (4) apply while an advisory notice has effect.
- (2) If the advisory notice relates to a decision, it is not lawful for the body concerned or an officer of the body to make or implement the decision unless and until the conditions set out in subsection (5) are met.
- (3) If the advisory notice relates to a course of action, it is not lawful for the body concerned or an officer of the body to take or continue to take the course of action unless and until the conditions set out in subsection (5) are met.
- (4) If the advisory notice relates to an item of account, it is not lawful for the body concerned or an officer of the body to enter the item of account unless and until the conditions set out in subsection (5) are met.
- (5) The conditions are—
 - (a) that the body has considered, in the light of the advisory notice and the statement under section 33(7), the consequences of doing the thing mentioned in whichever of subsections (2) to (4) is applicable;
 - (b) that the body or officer has given [^{F9}the Auditor General for Wales] the period of notice in writing required by the advisory notice under section 33(4)(d);
 - (c) that that period has expired.
- (6) An advisory notice takes effect on the day on which a copy of the notice is served on the person to whom it is addressed.
- (7) An advisory notice ceases to have effect—
 - (a) if a statement of reasons is not served in accordance with section 33(7), at the end of the period specified in section 33(8);
 - (b) in any other case, when it is withdrawn under section 33(10).
- (8) [^{F10}The Wales Audit Office] may recover from the body concerned any expenses reasonably incurred [^{F11}by the Auditor General for Wales] in or in connection with the issue of an advisory notice.
- (9) In this section “the body concerned”, in relation to an advisory notice, means the body to which, or to an officer of which, the notice is addressed.

Changes to legislation: There are currently no known outstanding effects for the Public Audit (Wales) Act 2004, Cross Heading: Prevention of unlawful expenditure etc. (See end of Document for details)

Textual Amendments

- F9** Words in s. 34(5)(b) substituted (1.4.2014) by Public Audit (Wales) Act 2013 (anaw 3), s. 35(2), **Sch. 4 para. 39(2)** (with Sch. 3 paras. 2, 3); S.I. 2013/1466, art. 3(1)
- F10** Words in s. 34(8) substituted (1.4.2014) by Public Audit (Wales) Act 2013 (anaw 3), s. 35(2), **Sch. 4 para. 39(3)(a)** (with Sch. 3 paras. 2, 3); S.I. 2013/1466, art. 3(1)
- F11** Words in s. 34(8) substituted (1.4.2014) by Public Audit (Wales) Act 2013 (anaw 3), s. 35(2), **Sch. 4 para. 39(3)(b)** (with Sch. 3 paras. 2, 3); S.I. 2013/1466, art. 3(1)

35 Advisory notices: legal actions

- (1) Subsection (2) applies if—
- (a) before an advisory notice is served, a body enters into a contract to dispose of or acquire an interest in land, and
 - (b) before the disposal or acquisition is completed, an advisory notice takes effect as a result of which it is unlawful for the body to complete the disposal or acquisition.
- (2) The existence of the advisory notice does not prejudice any remedy in damages which may be available to any person as a result of the body's failure to complete the contract.
- (3) No action lies against [^{F12}the Auditor General for Wales] in respect of loss or damage alleged to have been caused as a result of the issue of an advisory notice which was issued in good faith.

Textual Amendments

- F12** Words in s. 35(3) substituted (1.4.2014) by Public Audit (Wales) Act 2013 (anaw 3), s. 35(2), **Sch. 4 para. 40** (with Sch. 3 paras. 2, 3); S.I. 2013/1466, art. 3(1)

36 Power of auditor to make a claim for judicial review

- (1) [^{F13}The Auditor General for Wales] may make a claim for judicial review with respect to a decision of [^{F14}a local government body in Wales] or a failure of the body to act, if it is reasonable to believe that the decision or failure to act would have an effect on the body's accounts.
- (2) Subsection (1) is subject to section 31(3) of the [^{F15}Senior Courts Act 1981] (no claim for judicial review without permission of court).
- (3) The existence of the powers conferred on [^{F16}the Auditor General for Wales] under this Part is not a ground for refusing—
- (a) a claim falling within subsection (1), or
 - (b) an application for permission to make a claim falling within subsection (1).
- (4) On a claim by [^{F17}the Auditor General for Wales] for judicial review with respect to a decision of a body or a failure of a body to act, the court may make any order it thinks fit for the payment by the body of expenses incurred by [^{F18}the Auditor General for Wales or the Wales Audit Office] in connection with the claim.

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Textual Amendments

- F13** Words in s. 36(1) substituted (1.4.2014) by Public Audit (Wales) Act 2013 (anaw 3), s. 35(2), **Sch. 4 para. 41(2)(a)** (with Sch. 3 paras. 2, 3); S.I. 2013/1466, art. 3(1)
- F14** Words in s. 36(1) substituted (1.4.2014) by Public Audit (Wales) Act 2013 (anaw 3), s. 35(2), **Sch. 4 para. 41(2)(b)** (with Sch. 3 paras. 2, 3); S.I. 2013/1466, art. 3(1)
- F15** Words in s. 36(2) substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), ss. 59, 148, **Sch. 11 para. 1(2)**; S.I. 2009/1604, **art. 2**
- F16** Words in s. 36(3) substituted (1.4.2014) by Public Audit (Wales) Act 2013 (anaw 3), s. 35(2), **Sch. 4 para. 41(3)** (with Sch. 3 paras. 2, 3); S.I. 2013/1466, art. 3(1)
- F17** Words in s. 36(4) substituted (1.4.2014) by Public Audit (Wales) Act 2013 (anaw 3), s. 35(2), **Sch. 4 para. 41(4)(a)** (with Sch. 3 paras. 2, 3); S.I. 2013/1466, art. 3(1)
- F18** Words in s. 36(4) substituted (1.4.2014) by Public Audit (Wales) Act 2013 (anaw 3), s. 35(2), **Sch. 4 para. 41(4)(b)** (with Sch. 3 paras. 2, 3); S.I. 2013/1466, art. 3(1)

Changes to legislation:

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