

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

PUBLIC AUDIT (WALES) ACT 2004

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Public Audit (Wales) Act, which received Royal Assent on 16 September 2004. The explanatory notes have been prepared by the National Assembly for Wales in conjunction with the Wales Office, in order to assist the reader of the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given. A Glossary of terms used frequently in these Notes appears at the end of these Notes.

SUMMARY

3. The Act confers a number of new functions on the Auditor General for Wales. The most significant effect of the new functions is that the Auditor General will exercise most of the functions currently exercised in Wales by the Audit Commission for Local Authorities and the National Health Service in England and Wales. Thus there will be a single public audit body for Wales, headed by the Auditor General. It is intended that the Auditor General and his staff will be known collectively as "the Wales Audit Office" in English and "y Swyddfa Archwilio Cymru" in Welsh. The Wales Audit Office will have responsibility for the financial and performance audit of the Assembly; its sponsored bodies and a number of other publicly funded bodies; health bodies (primarily NHS Trusts and Local Health Boards) and local government bodies in Wales. The Act includes provisions intended to safeguard the constitutional independence and democratic accountability of local government.
4. The Act does not impact on audit arrangements for cross-border bodies. With regard to cross-border studies – that is, studies into the provision of particular services, the exercise of particular functions or the quality of financial or other management by local government or health bodies throughout England and Wales - the Act requires the Auditor General to co-operate with the Audit Commission in relation to local government and with the Audit Commission, the Commission for Healthcare Audit and Inspection, and the Assembly (in practice, its arm known as Healthcare Inspection Wales) in relation to health bodies in Wales. The Act confers powers and imposes duties on the Auditor General and these other bodies, enabling or requiring co-operation and consultation between them. The intention is that such co-operation will minimise the day-to-day impact on the work of the bodies, which are subject to the studies, of the carrying out of the studies.
5. The Act contains 75 sections and 4 Schedules. It is organised in four Parts. Part 1 deals with provisions relating to the functions of the Auditor General (an office established under section 90 of the GOWA: the Auditor General is appointed by Her Majesty and is a corporation sole). Part 1 deals with how that office is to be funded and also addresses staffing

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and other administrative matters and makes provision for additional functions of the Auditor General. Part 2 of the Act deals with local government bodies in Wales in the context of the new arrangements proposed by the Act. Under the provisions of the ACA, the Audit Commission is currently responsible for appointing the auditors of the accounts of these bodies. In relation to local government bodies in Wales, the Act transfers that responsibility to the Auditor General. The provisions in Part 2 largely parallel provisions consolidated into the ACA (and, before that, the Local Government Finance Act 1982). Part 3 adds the financial audit responsibilities for Welsh NHS bodies to the remit of the Auditor General. The GOWA already gives the Auditor General authority to undertake examinations into the economy, efficiency and effectiveness with which the major Welsh NHS bodies have used their resources. Part 4 of the Act contains miscellaneous, transitional and general provisions. Schedule 1 deals with an amendment to the audit of Best Value arrangements under the Local Government Act 1999. Schedule 2 deals with minor and consequential amendments made necessary by the Act. Schedule 3 sets out arrangements for detailed statutory transfer schemes required by the Act and Schedule 4 sets out relevant repeals.

TERRITORIAL EXTENT AND DEVOLUTION

6. The Act relates primarily to public audit in Wales. It does, however, amend certain primary legislation which extends to the United Kingdom. The Act includes both powers and duties of consultation and co-operation that enable the Auditor General for Wales and other audit and inspection bodies to co-operate on a cross-border basis. Section 2 confers a power (not a duty) on the Auditor General to co-operate on a wider UK basis. The power would extend to bodies such as Audit Scotland and the Office of the Comptroller and Auditor General for Northern Ireland. The provision was included in the draft Bill published in April 2003 for pre-legislative scrutiny and consultation and remains unchanged. The Public Audit Forum is an example of existing co-operation between audit bodies on a UK basis.

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.

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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

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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

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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.

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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.

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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.

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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

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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.

40. The Auditor General may, under substituted 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).

PART 2: LOCAL GOVERNMENT BODIES IN WALES

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.

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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

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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

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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.

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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.

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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)).

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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

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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.

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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.

PART 2, CHAPTER 2: STUDIES AND PERFORMANCE STANDARDS

Studies

Section 41: Studies for improving economy, etc in services

87. This section requires the Auditor General to undertake or promote studies to enable him to make recommendations for improving the economy, efficiency and effectiveness, and the financial or other management, of local government bodies in Wales. The Auditor General may also undertake or promote other studies into the provision of services by those bodies. The studies that may be carried out under subsection (1) of the section include -

- a) studies to enable the Auditor General to determine what directions to make under section 47. Those directions require local government bodies to publish information relating to their performance. The aim is to allow the public to compare the performance of different bodies, or of the same body in different years;
- b) studies of information published in accordance with section 47 directions, to enable the Auditor General to determine what information he himself will publish making comparisons about the standards of performance achieved by different bodies, or the same bodies in different years.

88. Before undertaking a study under this section (except a study of a kind to which section 41(2)(a) or (b) applies) the Auditor General must consult any associations of local government bodies in Wales which appear to him to be concerned (e.g. the Welsh Local Government Association) and any associations of employees he considers to be appropriate.

89. The section also requires the Auditor General and the Assembly (in practice, the Assembly Social Services Inspectorate Wales) to co-operate with regard to studies carried out under this section or under sections 94 and 95 of the Health and Social Care (Community Health and Standards) Act 2003. Sections 94 and 95 of that Act give the Assembly functions of carrying out reviews and studies, in respect of local authority social services functions in Wales, of a kind similar to those which the Auditor General can carry out under section 41 of this Act. The duty of co-operation is, thus, intended to minimise the practical impact of the regulatory regime on the work of local authority social services departments.

90. The Auditor General must publish or otherwise make available the result of any studies, and any recommendations made by him as a result, under this section.

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Section 42: Studies on impact of statutory provisions, etc

91. This section requires the Auditor General to undertake or promote studies to identify and assess the impact of statutory provisions, or directions or guidance made by the Assembly, on the economy, efficiency and effectiveness in the discharge of the functions of local government bodies in Wales. Before undertaking such studies the Auditor General must consult with the same associations as those referred to above in relation to section 41. The Auditor General is required to lay reports resulting from such studies before the Assembly where he thinks that a matter should be drawn to the attention of the Assembly. There is also a requirement for the Auditor General and the Assembly (in practice, the Assembly Social Services Inspectorate Wales) to co-operate in relation to studies under this section or under section 95(2) of the Health and Social Care (Community Health and Standards) Act 2003. Section 95(2) of that Act gives the Assembly functions to carry out studies, in respect of local authority social services functions in Wales, of a kind similar to those which the Auditor General can carry out under section 42 of this Act. The duty of co-operation is, thus, intended to minimise the practical impact of the regulatory regime on the work of local authority social services departments.

Section 43: Co-operation with Audit Commission

92. This section imposes a duty on the Auditor General to co-operate with the Audit Commission where it seems appropriate for the efficient and effective discharge of his functions under sections 41 and 42. This duty is consistent with that imposed on the Auditor General in respect of the Assembly, the Audit Commission and CHAI, in relation to health functions, by section 62. A complementary duty is imposed on the Audit Commission by Schedule 2 to the Act. Further mutual duties on the Auditor General and the Audit Commission to co-operate, by exchanging information to facilitate each of them in making cross-border comparisons when carrying out studies under sections 41 and 42 (in the case of the Auditor General) and sections 33 and 34 of the Audit Commission Act (in the case of the Audit Commission), are imposed in section 57 and Schedule 2, respectively.

Section 44: Studies at request of local government bodies in Wales

93. This section enables the Auditor General, at the request of a local government body in Wales, to undertake or promote studies designed to enable the Auditor General to make recommendations for improving the economy, efficiency and effectiveness in the discharge of the functions of that body. Before making a request to the Auditor General the body must consult appropriate associations of employees. The Auditor General must charge the body a fee that recovers the full cost to him of providing the services (by virtue of the new section 96A(4) of GOWA: see the note on section 7 above).

94. Similarly, in relation to health bodies, the Auditor General can carry out studies on request for improving economy, efficiency and effectiveness, under section 96(3)(b) of GOWA provided that the Assembly or a Minister of the Crown agrees.

Section 45: Benefit administration studies for Secretary of State

95. This section enables the Auditor General, at the request of the Secretary of State, to conduct or assist the Secretary of State to conduct a study designed to improve economy, efficiency and effectiveness and quality of performance in administration of housing benefit

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or council tax benefit functions by one or more local authorities in Wales (as defined in section 59(5)). The Auditor General can only conduct such a study if the Secretary of State agrees to pay the Auditor General a reasonable fee in respect of the study.

96. The Auditor General has, for the purposes of carrying out such studies, all the rights of access to documents and information etc. set out in section 52. The report resulting from the study must be sent to the Secretary of State, and the Secretary of State may publish the report if he chooses, in conjunction with the Auditor General. It was not considered appropriate to place the Secretary of State under a duty to publish the report. The report may for instance include information that might be helpful to fraudsters in highlighting a weakness in the benefits system. It may contain confidential information or the identity of individuals. For these reasons a blanket requirement to publish a report would be inadvisable.

Performance standards

Section 46: Performance standards: relevant bodies

97. This section specifies which local government bodies in Wales are required to comply with the provisions set out in sections 47 to 49. These are: a county council or county borough council in Wales; a committee or joint committee of a county council or county borough council in Wales; a National Park authority in Wales; a fire and rescue authority in Wales; and a police authority in Wales. The Assembly may by order extend the application of sections 47 to 49 to other local government bodies in Wales (as defined in section 12).

Section 47: Publication of information as to standards of performance

98. This section requires the Auditor General to give directions to relevant local government bodies in Wales, specified in (or in an order made under) section 46, as to the information they should publish so as to facilitate comparisons:-

- between the standards of performance achieved by different relevant bodies in a specified financial year; or
- between the standards of performance achieved by relevant bodies in different financial years.

The comparisons must be made by reference to the criteria of cost, economy, efficiency and effectiveness.

99. Provision is also made for the collection, recording, accuracy, completeness, retention and publication of the relevant information. The information must be published in accordance with the direction given, by a method permitted under section 48 and not later than 9 months after the end of the financial year in question. The section also makes provision for the local government electors for the area of the relevant body to inspect and make copies (free of charge) of documents containing the published information, or to require copies to be sent to them (on payment of a reasonable charge). A person who has custody of a document kept available for inspection commits an offence if he obstructs the rights of electors in this regard or refuses to comply with a requirement to supply copies.

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Section 48: Permitted methods of publishing information under section 47

100. This section sets out the ways in which information required by a direction made under section 47 is permitted to be published. The local government body is free (in accordance with its own powers) to publish the information in other forms in addition to the specified methods, such as publication on its internet site. But it must use at least one of the permitted methods as a minimum.

Section 49: Directions under section 47

101. This section sets out the requirements relating to the content, making and publication of a direction under section 47. A direction imposing a new requirement on a relevant body must be the subject of consultation by the Auditor General with any associations of relevant bodies and other persons that the Auditor General thinks fit, and must be given no later than 31 December in the financial year preceding the financial year in relation to which the information is to be published (e.g. 31 December 2005 in respect of information relating to the 2006-07 financial year).

102. The Auditor General must publish any directions he gives in a way designed to bring it to the attention of members of the public, as well as sending a copy to all bodies to which the direction relates.

PART 2, CHAPTER 3: BEST VALUE

Section 50: Best value audit and inspections

103. This section, in conjunction with Schedule 1 to the Act, makes amendments, in respect of specified local government bodies in Wales, to the best value regime created by Part 1 of the Local Government Act 1999 (“the 1999 Act”). Essentially, Schedule 1 provides, first, that the auditor responsible for the audit of best value performance plans in Wales is the auditor appointed by the Auditor General; and, second, that responsibility for best value compliance inspections, now carried out by the Audit Commission under s. 10 of the 1999 Act, passes, in Wales, to the Auditor General.

104. Best value performance plans are known as “improvement plans” in Wales where they are required to be prepared by Welsh county councils, county borough councils, community councils and National Park authorities (but not by police or fire and rescue authorities in Wales): see The Local Government (Whole Authority Analyses and Improvement Plans) (Wales) Order 2002 (SI 2002/886) (W. 101). Likewise, in Wales, best value compliance inspections of those bodies are known as 'whole authority analyses'.

PART 2, CHAPTER 4: GENERAL

Section 51: Social security references and reports to Secretary of State

105. This section empowers the Auditor General to refer to the Secretary of State (in practice, the Secretary of State for Work and Pensions) matters arising from work undertaken under Part 2 of the Act if he considers it relevant to the Secretary of State’s functions in respect of social security. An auditor appointed by the Auditor General is given a similar power.

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Sections 52 & 53: Rights of Auditor General for Wales to documents and information

106. These provisions are distinct from those in section 18, which deals with an appointed auditor's right of access to documents and information etc. However, they mirror those rights.

107. Under section 52, the Auditor General has the right of access at all reasonable times to every document relating to a local government body in Wales which he considers necessary for the exercise of his functions under Part 2 of the Act. By virtue of section 14(3), his functions do not extend to the direct audit of the accounts of a local government body in Wales.

108. Subsection (2) makes it clear that the 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, in the same way as appointed auditors (see the notes on section 18, above) - 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.

109. Section 52 is consistent with section 95 of the GOWA (as substituted) in this respect (see the note on section 11, above), and also with section 18, which deals with the rights of appointed auditors to documents and information etc. when auditing the accounts of 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)".

110. By virtue of section 52(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 the Auditor General may access in order to trace the use of public funds. For example, if the Auditor General is carrying out a value for money exercise in relation to one or more local government bodies in Wales, the Auditor General may need to have access to documents relating to the use of funds by organisations in receipt of significant grant funding. If an 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 General could have access, if necessary, to relevant documents held by contractor B.

111. In addition to his right of access to documents, the Auditor General has a right to any assistance, information and explanation he thinks necessary for the purposes of carrying out his functions under Part 2. By virtue of subsections (4) and (5) of section 52, he can require such assistance, information and explanation from anyone he thinks has information about:

- a local government body in Wales;
- a document to which the Auditor General has a right of access; or
- a person who holds or controls such a document.

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The Auditor General 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 he has a right of access.

112. This right to information is intended to assist the Auditor General 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 18.

113. The Auditor General, like appointed auditors, is also entitled to every facility he may reasonably need in order to carry out his functions under Part 2 (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.

114. The main functions of the Auditor General to which these rights of access apply are: appointing auditors under section 14; undertaking economy, efficiency, effectiveness and other studies under sections 41, 42, 44 and 45; ordering an extraordinary audit under section 37; and issuing directions under section 47. The rights also apply to the Auditor General's functions under Chapter 3 (Best Value).

115. Section 52(6) also gives the Auditor General rights to inspect specific documents for the purpose of ensuring that auditors appointed by him are maintaining proper standards when auditing the accounts of local government bodies in Wales.

116. Section 53 specifies that a person who fails to comply, without reasonable excuse, with any of the Auditor General's requirements under section 52(4) is guilty of an offence, specifies the penalty applicable, and provides for the recovery of any expenses incurred by the Auditor General in connection with a successful prosecution under the section.

Section 54: Restriction on disclosure of information

117. This section places restrictions on the disclosure of certain information relating to a particular body or person. The restrictions apply where information is acquired by the Auditor General, an appointed auditor (or by a person acting on behalf of the Auditor General or an appointed auditor) in the course of exercising their functions under:

- Part 2 of the Act
- Part 1 of the Local Government Act 1999 (functions in relation to the best value regime)
- The new section 145C of GOWA (inserted by section 5 of the Act), dealing with studies relating to registered social landlords in Wales.

The information must not be disclosed unless in accordance with the exceptions listed in section 54(2). One of the exceptions is that the disclosure is made for the purposes of any functions of the Auditor General for Wales, or of an auditor, under Part 2 of the Act or Part 1 of the Local Government Act 1999. Thus section 54 does not obstruct the Auditor General or an auditor from putting into the public domain any information which should be put there for the proper exercise of that person's functions.

118. Disclosing the information in contravention of section 54(2) constitutes an offence under section 54(3).

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119. Section 54 mirrors the provisions of section 49 of the ACA. At the time of the passage of the Act, section 49 of the ACA was under review by the Department of Constitutional Affairs with a view to its amendment or repeal by order under section 75 of the Freedom of Information Act 2000. This is because section 49 is a provision capable of preventing the disclosure of information under section 1 of the Freedom of Information Act. In order to ensure that section 54 remains consistent with section 49, section 54(6) gives the Secretary of State (in practice, the Secretary of State for Wales) an order-making power to amend or repeal section 54 in such a way as to reflect amendments to or repeal of section 49 of the ACA. The order-making power cannot be used so as to make section 54 more restrictive of the disclosure of information than it currently is. Any order made under section 54(6) would be subject to approval by both Houses of Parliament, in the same way as an order under section 75 of the Freedom of Information Act, amending or repealing section 49 of the ACA, would be.

Section 55: Supply of benefit information to Auditor General for Wales

120. This section enables the Secretary of State (in practice, the Secretary of State for Work and Pensions) to supply the Auditor General with information in respect of housing benefit and council tax benefit that he considers relevant to the Auditor General's functions.

Section 56: Publication of information by Auditor General for Wales

121. This section gives the Auditor General power to publish particular information relating to audits carried out under Part 2 of the Act. Other powers of, or duties on, the Auditor General to publish are contained in various provisions of the Part, e.g. in relation to studies under section 41. The information covered by section 56 is information relating to:

- public interest reports made by appointed auditors under section 22 and the consequences of such reports,
- contraventions by local government bodies in Wales of audit regulations made by the Assembly under section 39, and
- contraventions by local government bodies in Wales of directions from the Auditor General under section 47 requiring the publication of information about standards of performance.

122. In relation to public interest reports by appointed auditors, the Auditor General must not publish details of any decision made at a meeting of the body in question while the public were excluded from that meeting on certain grounds. The grounds are that confidential information (within the meaning of s. 100A(3) of the Local Government Act 1972), exempt information (within the meaning of section 100I of that Act) or information which it would be prejudicial to the public interest to disclose, was to be discussed in order to reach the decision.

123. The Auditor General must inform a body before publishing information concerning it. He must publish the information in a way that he considers appropriate for bringing it to the attention of those who may be interested in it.

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Section 57: Provision of information to Audit Commission

124. This section requires the Auditor General to provide the Audit Commission, if it so requests, with information to enable it to make comparisons between local government bodies in Wales (as defined in sections 12 and 59(5)) and other local government bodies in respect of which the Audit Commission has functions. The duty on the Auditor General applies only when the Commission is requesting such information for the purposes of its functions under sections 33 and 34 of the ACA (to undertake or promote studies for improving economy etc in services and studies on the impact of statutory provisions, etc). The purpose of the section is to facilitate cross-border comparisons between bodies and sectors, with the aim of raising standards in both England and Wales. The equivalent duty is placed on the Audit Commission to supply information to the Auditor General by Schedule 2, amending the ACA. These duties are complementary to other duties and powers of co-operation applicable to the Auditor General and the Audit Commission elsewhere in the Act, particularly in section 43 and in other provisions of Schedule 2.

125. The Auditor General can of course supply other information to the Commission, where to do so is within his powers.

Section 58: Orders and regulations

126. This section sets out the procedures for making orders and regulations, by the Assembly or the Secretary of State, under Part 2 of the Act.

Section 59: Interpretation of Part 2

127. This section sets out the interpretation of certain terms for the purposes of Part 2.

PART 3: WELSH NHS BODIES

Section 61: Audit of Welsh NHS bodies

128. The section makes the Auditor General responsible for the financial audit of the accounts of Welsh NHS bodies (as defined in section 60), in place of the Audit Commission, which currently audits these accounts. It requires the accounts to be submitted to the Auditor General no later than 5 months following the end of the financial year to which they relate. The Auditor General is required to examine and certify the accounts submitted to him; and to lay a copy of them together with his report on them before the Assembly within 4 months of them being submitted to him.

129. In examining the accounts the Auditor General must satisfy himself, amongst other things, that the body has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources.

Section 62: Co-operation with Assembly, Audit Commission or CHAI

130. The section imposes a duty on the Auditor General to co-operate with the Assembly, the Audit Commission and with CHAI (established by the Health and Social Care (Community Health and Standards) Act 2003, where it seems appropriate for the efficient and effective discharge of his functions in relation to Welsh NHS bodies. In the case of CHAI, this is consistent with the Assembly's objective of ensuring effective cross-border co-operation in respect of economy, efficiency and effectiveness studies and other studies which are of

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common interest and benefit to England and Wales. The section also seeks to ensure that the day-to-day impact, on the Welsh NHS bodies, of the carrying out of studies and reviews is minimised through co-operation between the regulatory bodies.

131. Complementary duties are imposed on the Assembly, the Audit Commission and CHAI via amendments, in Schedule 2 of the Act, to the GOWA, the ACA and the Health and Social Care (Community Health and Standards) Act 2003 respectively. See also the notes concerning section 64 below.

Section 63: Audit of accounts of officers of Welsh NHS bodies

132. The section applies the Auditor General's financial audit responsibilities to the accounts of an officer of a Welsh NHS body who holds money or property on its behalf (for instance a named charitable trustee).
Section 64: Provision of information by CHAI

133. This section obliges CHAI to provide the Auditor General, if he so requests, with information to enable him to make comparisons between Welsh NHS bodies on the one hand, and English NHS bodies and cross-border Special Health Authorities, on the other. The duty on CHAI applies where the Auditor General is exercising his functions under section 145 or 145A of the GOWA in relation to one or more Welsh NHS bodies – that is, his functions of undertaking or promoting studies into the economy, efficiency and effectiveness of the use of resources by such bodies, or into how they provide their services. The equivalent duty is imposed on the Auditor General by Schedule 2, amending the Health and Social Care (Community Health and Standards) Act 2003. The intention of these two provisions is to facilitate the raising of standards in both England and Wales by enabling the regulatory bodies to compare practice in the two countries. The duties the two provisions impose are complementary to other duties and powers of co-operation applicable to the Auditor General and CHAI elsewhere in the Act, particularly in section 62 and other provisions of Schedule 2.

PART 4: MISCELLANEOUS AND GENERAL

Miscellaneous

Section 65: Public bodies subject to audit etc

134. Section 65 of the Act amends section 144 of the GOWA. The previous position was that section 144(8) empowered only the Secretary of State, by order, to alter the list of bodies/offices subject to audit etc. provisions in Schedule 17 of the GOWA. The Secretary of State had (and has) the power to do so, by adding any public body (subject to certain specified exceptions) to the list; omitting any public body from the list; or altering the description of any public body in the list in Schedule 17 to the GOWA.

135. The significance of Schedule 17 is, first, that if a public body is listed in Parts 1 or 2 of it, the Secretary of State can then, by order (and subject to section 144(2) of the GOWA), make provision about that public body's accounts, the audit of those accounts or about reports it must make concerning the exercise of its functions. Such an order could include a requirement that the public body's auditor be the Auditor General. Secondly, once a public body is listed in Schedule 17, the Auditor General has the power to carry out a economy, efficiency and effectiveness examination into the way in which it has used its resources in discharging its functions (see section 145(1) of the GOWA). Under the Act, the Auditor

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General will also have the power to carry out other studies in relation to such a body, by virtue of section 3 of the Act, which inserts a section 145A into the GOWA.

136. Section 65(2) of the Act inserts a new subsection (8A) into section 144 of the GOWA. This provision enables the Assembly, with the consent of the Secretary of State, to amend Schedule 17 of the GOWA by order. Thus the Assembly and the Secretary of State will have largely parallel powers in this regard. However, unlike the Secretary of State, the Assembly will not be able to take public bodies out of Schedule 17, only add public bodies to it or alter the description of those public bodies contained within it.

137. Section 65(4) of the Act has the effect of adding the Care Council for Wales, an Assembly Sponsored Public Body, to Part 1 of Schedule 17 to the GOWA, so as to ensure that the Auditor General has the power to undertake economy, efficiency and effectiveness examinations in respect of it. The Care Standards Act 2000 did not include the Care Council for Wales in Schedule 17 to the GOWA for this purpose, although that Act does make provision for the financial audit of the Council's accounts. The proposed amendment puts the audit of the Council on the normal statutory footing for Assembly Sponsored Public Bodies.

Transitional provision

Section 69: Local government bodies in Wales

138. This section makes provision for appointments of auditors made by the Audit Commission for local government bodies in Wales to continue for the whole of their term, despite the coming into force of those provisions of the Act which, in effect, transfer the responsibility for appointing the auditors from the Audit Commission to the Auditor General. From the time that the relevant provisions of the Act come into force, however, an auditor appointed by the Audit Commission to audit the accounts of a local government body in Wales will be regarded as having been appointed by the Auditor General, and his duties will be his duties under Part 2 of the Act, not the duties he previously had under the ACA (subsection (2) of section 69).

139. Subsections (3) and (4) make similar provision in relation to persons assisting local government auditors under arrangements approved by the Audit Commission before the relevant provisions of the Act come into force.

140. Subsections (5) and (6) make transitional provision in relation to economy, efficiency and effectiveness studies or other studies which, at the time the relevant provisions of the Act come into force, are in the course of being carried out by the Audit Commission, and which touch on a local government body in Wales. The Audit Commission is to be able to complete the study under the provisions of the ACA.

Section 70: Welsh NHS bodies

141. This section makes provision equivalent to section 69, but in respect of Welsh NHS bodies. The only exception to this is that section 70 does not deal with persons assisting the auditors of Welsh NHS bodies. It is envisaged that the Auditor General will make new arrangements for any such persons, using his ancillary powers, as soon as the relevant provisions of the Act come into force.

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SCHEDULE 1: BEST VALUE AUDIT AND INSPECTIONS

142. Generally, the Schedule amends relevant provisions of the Local Government Act 1999 "the 1999 Act" to make the Auditor General, or an auditor appointed by him (as applicable), responsible for best value audits and inspections in Wales.

143. **Paragraph 2** amends the 1999 Act to define best value authorities in Wales.

144. **Paragraph 3** amends the 1999 Act to give the Assembly power to provide for certain other bodies to be best value authorities in Wales or to modify the application of the 1999 Act in relation to specified bodies in Wales.

145. **Paragraph 4** amends the 1999 Act to make the Auditor General the "relevant audit authority" in respect of best value authorities in Wales for the purpose of specifying performance indicators and performance standards in relation to best value. The "relevant audit authority" for best value authorities in England remains the Audit Commission.

146. **Paragraph 5** amends the 1999 Act so as to apply relevant provisions in Part 2 of the Act to the audit of Welsh best value authorities' performance plans - in particular, the appointed auditors' rights to documents and information etc. under section 18 of the Act.

147. **Paragraphs 6 and 7** amend the 1999 Act so as to make provision for the Auditor General to prepare and keep under review a code of practice prescribing the way in which auditors appointed by him are to carry out their best value audit functions in respect of Wales. Paragraph 7 also provides for him to prescribe a scale or scales of fees, subject to consultation, in respect of the audit of Welsh best value authority performance plans. The combined effect of paragraphs 6 and 7 is also to require an auditor to have regard to the requirements of the code when undertaking an audit of an improvement plan of a best value authority in Wales. Until the Auditor General issues a code under the new section 8A to be inserted into the 1999 Act by paragraph 7, auditors of such plans are to have regard to the Audit Commission's code issued under section 8 (see new section 8B(3) and (4) in paragraph 7).

148. **Paragraphs 8 and 9** amend the 1999 Act so as to make provision for the Auditor General to carry out an inspection of the compliance by a best value authority in Wales with the requirements of Part 1 of the 1999 Act. The Assembly has the power to direct such an inspection, under s. 10A (as inserted by this Act), read with s. 29, of the 1999 Act, by virtue of which the references in section 10A to "the Secretary of State" are to be read as references to the Assembly.

149. **Paragraph 10** amends the 1999 Act so as to provide that references to an "inspector" in respect of a best value compliance inspection relating to a best value authority in Wales means the Auditor General, a member of his staff or a person providing services to him who is carrying out a best value compliance inspection under s. 10A of the 1999 Act (as inserted by this Act).

150. **Paragraphs 11 and 12** amends the 1999 Act so as to enable the Auditor General to prescribe, subject to consultation, a scale or scales of fees for best value compliance inspections in relation to best value authorities in Wales. The duty to consult includes a duty to consult the Assembly, since, by virtue of s. 29 of the 1999 Act, the references in new s. 12A to "the Secretary of State" are to be read as references to the Assembly.

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151. **Paragraph 13** amends the 1999 Act so as to require the Auditor General to issue a report in respect of a best value compliance inspection and sets out related requirements. By virtue of s. 29 of the 1999 Act, the references in new s. 13A to "the Secretary of State" are to be read as references to the Assembly.

152. **Paragraph 14** amends the 1999 Act so as to require the Assembly to consult the Auditor General before making regulations in respect of the keeping of accounts by best value authorities. (The words "the Secretary of State" in s. 23 of the 1999 Act effectively mean the Assembly in this context, by virtue of s. 29 of the same Act).

153. **Paragraph 15** amends the 1999 Act so as to require the Auditor General to have regard to any guidance issued by the Assembly in respect of securing the co-ordination of different kinds of inspection by the regulatory bodies listed in section 25 of the 1999 Act. (The words "the Secretary of State" in s. 25 of the 1999 Act effectively mean the Assembly in this context, by virtue of s. 29 of the 1999 Act).

154. **Paragraph 16** amends the 1999 Act so as to require the Assembly to consult the Auditor General before issuing any guidance on the carrying out of best value compliance inspections in Wales. (The words "the Secretary of State" effectively mean the Assembly in this context, by virtue of s. 29 of the 1999 Act).

155. **Paragraph 17** amends the 1999 Act so as to empower the Assembly to make grants to the Auditor General in respect of expenditure incurred or to be incurred by the Auditor General under Part 1 of the 1999 Act. Current practice is for the cost of best value audits and inspection to be funded 50 per cent through fees charged to best value authorities and 50 per cent through National Assembly grant to the Audit Commission.

SCHEDULE 2: MINOR AND CONSEQUENTIAL AMENDMENTS

156. The Schedule makes minor and consequential amendments to existing legislation. The principal consequential amendments are as follows.

157. Sections 33 and 34 of the ACA are amended so as to restrict the Audit Commission's power to undertake or promote economy, efficiency and effectiveness studies, statutory impact studies, and other studies relating to local government bodies in Wales. The Audit Commission will not be able to undertake or promote such a study unless it is being undertaken throughout England and Wales (see paragraphs 23(7) and 24(4) of Schedule 2). Thus the Audit Commission will be able to continue to undertake cross-border studies in relation to local government bodies in Wales. The Audit Commission will have to consult the Auditor General before undertaking such a study, and take into account any relevant work done or being done by him (see paras. 23(6) and 24(3)). The Commission will also have to co-operate with the Auditor General where appropriate for the efficient and effective discharge of its function of carrying out such studies (para. 34). The Auditor General is also under a duty to provide the Commission, on request, with information enabling it to make comparisons between English and Welsh bodies when it is carrying out such studies - see section 57 and the notes on it. Authority to undertake economy, efficiency and effectiveness studies, statutory impact studies, and other similar studies solely in respect of local government bodies in Wales will pass to the Auditor General as a result of the Act.

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158. Amendments are also made to the GOWA and the Health and Social Care (Community Health and Standards) Act 2003 imposing duties on the Assembly and the CHAI to consult and co-operate with the Auditor General, and take into account work done or being done by him, when exercising their functions in relation to Welsh NHS bodies (as defined in section 60). These are complementary duties to those imposed on the Auditor General elsewhere in the Act. A duty is also imposed on the Auditor General to provide the CHAI, on request, with information enabling it to make comparisons between English and Welsh NHS bodies when it is undertaking reviews or studies under sections 51, 52 or 57 of the Health and Social Care (Community Health and Standards) Act 2003.

SCHEDULE 3: TRANSFER SCHEMES

159. This Schedule sets out provisions in relation to transfer schemes to be made by the Secretary of State, with the consent of the Assembly, for the transfer to the Auditor General of property, rights and liabilities of the Comptroller and Auditor General and of the Audit Commission. The schemes can cover the transfer of staff. Transfers of staff may be governed by the Transfer of Undertakings (Protection of Employment) Regulations 1981 (SI 1981/1794), as amended. If not, Schedule 3 ensures, in accordance with Government policy, that the transfers will comply with the principles underlying those Regulations, and that staff will be treated no less favourably than they would have been had the Regulations applied. This means, amongst other things, that staff transferring will retain continuity of employment and their terms and conditions of employment after the transfer will be no less favourable to them than those on which they were employed immediately before the transfer. Matters such as pension rights, which would not be covered by the Transfer of Undertakings (Protection of Employment) Regulations 1981 (as amended), even if those Regulations apply, will be dealt with in the transfer schemes.

COMMENCEMENT

160. The provisions of the Act when enacted will be brought into effect on one or more dates appointed by the Assembly.

GLOSSARY OF TERMS

161. In these Explanatory Notes, the terms set out in the left-hand column of the table below have the meanings attributed to them in the right-hand column of the table.

ACA	=	Audit Commission Act 1998
appointed auditor	=	depending on the context, either auditors appointed in respect of local government bodies by the Audit Commission under the ACA, or auditors appointed by the Auditor General under this Act in respect of local government bodies in Wales.
Assembly	=	National Assembly for Wales
Audit Commission	=	the Audit Commission for Local Authorities and the National Health Service in England and Wales

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Auditor General	=	Auditor General for Wales
best value authorities in Wales	=	as defined in paragraph 2 of Schedule 1 to the Act
CHAI	=	the Commission for Healthcare Audit and Inspection
GOWA	=	Government of Wales Act 1998
local authority in Wales	=	as defined in section 59(5) of the Act
local government body in Wales	=	as defined in section 12 of the Act
performance audit	=	a study into the economy, efficiency and effectiveness, and/or quality, with which a body has performed/is performing its functions or any of them.
value for money	=	economy, efficiency and effectiveness
Wales Audit Office ("y Swyddfa Archwilio Cymru" in Welsh)	=	the Auditor General and his staff
Welsh NHS body	=	as defined in section 60 of the Act

HANSARD REFERENCES

The following table sets out the dates and Hansard references for each stage of this Act's passage through Parliament.

Stage	Date	Hansard reference
House of Lords		
Introduction	27 November 2003	Vol 655 Col 23
Second Reading	9 December 2003	Vol 655 Col 708-730
Committee	23 February 2003 and 25 February 2003	Vol 658 Cols GC 1-54 Vol 658 Cols GC 115-148
Report	1 April 2004	Vol 659 Cols 1457-1483
Third Reading	11 March 2004	Vol 661 Cols 166-173
Commons Amendments	8 September 2004	Vol 664 Cols 630-638
House of Commons		
Introduction	12 May 2004	
Second Reading	17 June 2004	Vol 422 Cols 929-961
Committee	29 June 2004	Hansard Standing Committee D
Report and Third Reading	19 July 2004	Vol 424 Cols 101-113

Royal Assent – 16 September 2004 House of Lords Hansard Vol. 664 Col. 1470
House of Commons Hansard Vol 424 Col 1517