



# Local Government (Wales) Measure 2009

2009 nawm 2

## PART 1

### LOCAL GOVERNMENT IMPROVEMENT

#### *Other functions of the Auditor General for Wales*

#### **21 Special inspections**

- (1) The Auditor General for Wales may carry out an inspection of a Welsh improvement authority's compliance with the requirements of this Part if—
  - (a) the Auditor General is of the opinion that the authority may fail to comply with the requirements of this Part; or
  - (b) any relevant regulator informs the Auditor General that, in the regulator's opinion, the authority may fail to comply with the requirements of this Part.
- (2) But the Auditor General must, before deciding whether to carry out an inspection—
  - (a) consult the Welsh Ministers; and
  - (b) in a case where the Auditor General has stated in a report under section 19(1)(h) that the Auditor General is minded to carry out a special inspection, consider any statement made by the authority in response in accordance with section 20(3).
- (3) An inspection under subsection (1) may relate to some or all of an authority's functions.
- (4) If the Welsh Ministers direct the Auditor General for Wales to carry out an inspection of compliance with the requirements of this Part by a Welsh improvement authority, the Auditor General must comply with the direction.
- (5) A direction under subsection (4) may relate to some or all of an authority's functions.
- (6) Before giving a direction under subsection (4), the Welsh Ministers must consult the Auditor General.

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- (7) The Auditor General for Wales must notify a Welsh improvement authority if—
  - (a) the Auditor General decides to carry out an inspection of the authority under subsection (1); or
  - (b) the Welsh Ministers have directed the Auditor General to carry out an inspection of the authority under subsection (4).
- (8) The notification must specify the functions to which the inspection relates.
- (9) In carrying out an inspection, and, in the case of an inspection under subsection (1), deciding whether to do so, the Auditor General must have regard to any guidance issued by the Welsh Ministers.
- (10) For the purposes of this Part, an inspection under this section is referred to as a special inspection.
- (11) In this section a reference to an authority’s functions includes a reference to arrangements made to facilitate or support the exercise of its functions.

## **22 Reports of special inspections**

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

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

- (1) The relevant regulators and the Auditor General for Wales must have regard to the need for co-ordination in the exercise of regulatory functions.
- (2) “Regulatory functions” means the relevant functions of the relevant regulators and the functions of the Auditor General for Wales under subsection (7).
- (3) In relation to each financial year, the Auditor General for Wales must, after consulting the relevant regulators, produce a timetable for each Welsh improvement authority which sets out the Auditor General’s opinion as to the dates or times in that year at or during which—
  - (a) the relevant regulators should exercise their relevant functions in relation to the authority; and
  - (b) the Auditor General should exercise the functions referred to in subsection (7) in relation to the authority.
- (4) The duty under subsection (3) may be discharged by the production of a timetable which relates to more than one financial year.
- (5) In relation to a Welsh improvement authority, the relevant regulators in exercising their relevant functions and the Auditor General for Wales in exercising the functions referred to in subsection (7) must take all reasonable steps to adhere to the timetable produced in respect of the authority under subsection (3).
- (6) The Auditor General for Wales must assist the relevant regulators to comply with their duties under subsections (1) and (5).
- (7) The functions of the Auditor General for Wales referred to in subsection (2) are the Auditor General’s functions under—
  - (a) section 13 and 41 of the Public Audit (Wales) Act 2004; and
  - (b) sections 17 to 19 of this Measure.

## **24 Annual improvement reports**

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

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- (iii) make a recommendation to the Welsh Ministers to give a direction to the authority under section 29;
- (iv) exercise any of the Auditor General’s functions in relation to the authority;
- (c) must make any such recommendation as is mentioned in paragraph (b)(i) to (iii) as the Auditor General considers ought to be made.

## **25 Statement of practice**

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

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

- (1) An inspector has a right of access at all reasonable times—
  - (a) to any premises of a Welsh improvement authority, and

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- (b) to any document relating to the authority which appears to the inspector to be necessary for the purposes of the inspection, audit or assessment.
- (2) The right conferred by subsection (1) includes power to inspect, copy or take away the document.
- (3) An inspector—
  - (a) may require a person holding or accountable for any such document to give the inspector such information or explanation as the inspector thinks necessary, and
  - (b) may require that person to attend before the inspector in person to give the information or explanation or to produce the document.
- (4) In relation to a document kept in electronic form, the power in subsection (3)(b) to require a person to produce a document includes power to require it to be produced in a form in which it is legible and can be taken away.
- (5) In connection with inspecting such a document, an inspector—
  - (a) may obtain access to, and inspect and check the operation of, any computer and associated apparatus or material which the inspector considers is or has been used in connection with the document;
  - (b) may require a person within subsection (6) to afford the inspector such reasonable assistance as the inspector may require for that purpose.
- (6) A person is within this subsection if the person is—
  - (a) the person by whom or on whose behalf the computer is or has been used; or
  - (b) a person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material.
- (7) A Welsh improvement authority must provide an inspector with every facility and all information which the inspector may reasonably require for the purposes of the inspection or assessment.
- (8) An inspector must—
  - (a) unless in the opinion of the inspector the circumstances are exceptional, give three clear days' notice of any requirement under this section, and
  - (b) if so required, produce documentation which identifies the inspector as a person authorised to impose requirements under this section.
- (9) A person who without reasonable excuse obstructs the exercise of any power conferred by this section or fails to comply with a requirement of an inspector under this section is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (10) Any expenses incurred by an inspector in proceedings for an offence under subsection (9) alleged to have been committed in relation to an inspection of a Welsh improvement authority are, so far as not recoverable from any other source, recoverable from the authority.
- (11) In this section “inspector” means the Auditor General for Wales, a member of the Auditor General’s staff or a person providing services to the Auditor General, who is carrying out an audit under section 17, an assessment under section 18 or a special inspection.

## 27 Fees

- (1) The Auditor General for Wales must prescribe scales of fees in respect of—
  - (a) audits carried out under section 17;
  - (b) assessments carried out under section 18;
  - (c) special inspections.
- (2) Different scales may be prescribed in respect of the different activities described in subsection (1), different types of the same activity and different types of Welsh improvement authority.
- (3) An authority audited, assessed or inspected as mentioned in subsection (1) must, subject to subsection (4), pay to the Auditor General for Wales the fee payable under the appropriate scale.
- (4) If it appears to the Auditor General that the work involved in a particular audit, assessment or inspection was substantially more or less than that envisaged by the appropriate scale, the Auditor General for Wales may charge a fee which is larger or smaller than that referred to in subsection (3).
- (5) Before prescribing a scale of fees under this section the Auditor General must consult—
  - (a) the Welsh Ministers, and
  - (b) persons appearing to the Auditor General to represent authorities which may be audited, assessed or inspected as mentioned in subsection (1).
- (6) Section 21 of the Public Audit (Wales) Act 2004 (fees prescribed by Assembly) shall have effect in relation to a scale or scales of fees prescribed by the Auditor General under this section as it has effect in relation to a scale or scales prescribed under section 20(1) of that Act, but subject to the following modifications—
  - (a) in subsections (3) and (4) of section 21, for “section 20(4) and (5)” there is substituted “section 27(3) and (4) of the Local Government (Wales) Measure 2009”;
  - (b) subsection (5)(c) is omitted.