

# **PUBLIC AUDIT (WALES) ACT 2004**

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## **EXPLANATORY NOTES**

### **TERRITORIAL EXTENT AND DEVOLUTION**

#### **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.

***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 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.

### ***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

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

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.