



# Public Audit (Wales) Act 2004

## 2004 CHAPTER 23

### PART 2

#### LOCAL GOVERNMENT BODIES IN WALES

### CHAPTER 1

#### ACCOUNTS AND AUDIT

#### *Local government bodies in Wales*

## 12 Local government bodies in Wales

- (1) In this Part “local government body in Wales” means any of these—
- (a) a local authority in Wales;
  - (b) a committee of a local authority in Wales (including a joint committee of two or more local authorities in Wales);
  - (c) a port health authority for a port health district wholly in Wales;
  - (d) a National Park authority for a National Park in Wales;
  - (e) a conservation board established by order of the Assembly under section 86 of the Countryside and Rights of Way Act 2000 (c. 37);
  - (f) a police authority for a police area in Wales;
  - (g) a fire and rescue authority in Wales constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004 (c. 21) or a scheme to which section 4 of that Act applies;
  - (h) an internal drainage board for an internal drainage district wholly in Wales;
  - (i) a local probation board established under section 4 of the Criminal Justice and Court Services Act 2000 (c. 43) for an area in Wales.
- (2) The Assembly may by order amend subsection (1) by—

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- (a) adding a public body whose functions relate exclusively to Wales or an area of Wales;
  - (b) omitting a body;
  - (c) altering the description of a body.
- (3) In subsection (2) “public body” means a body which—
- (a) exercises functions of a public nature, or
  - (b) is entirely or substantially funded from public money.

### *Audit of accounts*

## **13 Audit of accounts of local government bodies in Wales**

- (1) A local government body in Wales—
- (a) must make up its accounts each year to 31 March or such other date as the Assembly may generally or in any special case direct;
  - (b) must ensure that its accounts are audited in accordance with this Chapter by one or more auditors appointed by the Auditor General for Wales.
- (2) The Auditor General for Wales must appoint auditors to audit the accounts of local government bodies in Wales.

## **14 Appointment of auditors**

- (1) This section applies in relation to the appointment of persons as auditors under section 13.
- (2) The Auditor General for Wales may appoint a person only if the person is eligible for appointment under this section.
- (3) But the Auditor General for Wales may not appoint himself.
- (4) A person is eligible for appointment under this section only if the person—
- (a) is eligible for appointment as a company auditor under section 25 of the Companies Act 1989 (c. 40), or
  - (b) is a member of a body of accountants, established in the United Kingdom or another EEA State, which is for the time being approved by the Assembly for the purposes of this subsection.
- (5) If two or more auditors are appointed to audit the accounts of a body they may be appointed—
- (a) to act jointly;
  - (b) to act separately in relation to different parts of the accounts;
  - (c) to discharge different functions in relation to the audit.
- (6) Before appointing an auditor to audit the accounts of a body the Auditor General for Wales must consult the body.
- (7) The Auditor General for Wales may require a body to make available for inspection by him or on his behalf any documents which he reasonably requires for the purpose of assisting him to decide on the appointment of auditors to audit the body’s accounts.

- (8) The appointment of an auditor who is not a member of the staff of the Auditor General for Wales must be on the terms, and for the period, determined by the Auditor General for Wales.
- (9) In this section “EEA State” means any State which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992, as adjusted by the Protocol signed at Brussels on 17th March 1993.

## **15 Persons to assist auditors**

- (1) The Auditor General for Wales may approve arrangements for one or more persons to assist an auditor appointed under section 13 by carrying out the functions of the auditor under this Part which are specified in the arrangements.
- (2) Arrangements may be approved under subsection (1) either generally or for a particular case or cases.
- (3) References in the following provisions of this Part to an auditor include, in relation to a function of an auditor, a person carrying out the function under arrangements approved under subsection (1).

## **16 Code of audit practice**

- (1) The Auditor General for Wales may issue a code of audit practice prescribing the way in which auditors are to carry out their functions under this Chapter.
- (2) A code issued under this section must embody what appears to the Auditor General for Wales to be the best professional practice with respect to the standards, procedures and techniques to be adopted by auditors.
- (3) A code issued under this section may make different provision for different cases.
- (4) The Auditor General for Wales must not issue a code under this section unless a draft of the code has been laid before, and approved by a resolution of, the Assembly.
- (5) In preparing a draft of a code under this section the Auditor General for Wales must consult any associations of local authorities in Wales which appear to him to be concerned.
- (6) The Auditor General for Wales must arrange for any code issued by him under this section to be published in such manner as he thinks appropriate.
- (7) A code issued under this section is subject to annulment in pursuance of a resolution of either House of Parliament in the same way as a statutory instrument; and section 5 of the Statutory Instruments Act 1946 (c. 36) applies accordingly.
- (8) The Auditor General for Wales may from time to time revise a code previously issued under this section; and subsections (2) to (7) apply to a revised code as they apply to a code as first prepared.
- (9) The Assembly may not delegate the function of approving a draft of a code under this section.

## **17 General duties of auditors**

- (1) This section applies in relation to the audit of a body's accounts under this Chapter.
- (2) An auditor must, by examination of the accounts and otherwise, satisfy himself of these things—
  - (a) that the accounts are prepared in accordance with regulations under section 39;
  - (b) that they comply with the requirements of all other statutory provisions applicable to the accounts;
  - (c) that proper practices have been observed in the compilation of the accounts;
  - (d) that the body has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources;
  - (e) that the body, if required to publish information in pursuance of a direction under section 47 (performance information) has made such arrangements for collecting and recording the information and for publishing it as are required for the performance of its duties under that section.
- (3) An auditor must comply with any provisions of a code of audit practice issued under section 16 which—
  - (a) are applicable to the audit of the accounts being audited, and
  - (b) are in force.
- (4) At any time before there are provisions of a code of audit practice with which an auditor is required to comply under subsection (3), the auditor must comply with any provisions of a code of audit practice issued under section 4 of the Audit Commission Act 1998 (c. 18) which—
  - (a) are applicable to the audit under that Act of the accounts of bodies of a corresponding description to the body, and
  - (b) are in force.

## **18 Auditors' rights to documents and information**

- (1) An auditor has a right of access at all reasonable times to every document relating to a local government body in Wales which appears to him necessary for the purposes of his functions under this Chapter.
- (2) The documents relating to a body to which the right conferred by subsection (1) applies may include in particular—
  - (a) a document which is held or controlled by a person who has received financial assistance from the body by means of a grant, loan or guarantee or as a result of the taking of an interest in any property or body corporate;
  - (b) a document which is held or controlled by a person who has supplied goods or services to the body in pursuance of a contract to which the body was party or who has supplied goods or services in pursuance of a relevant sub-contract;
  - (c) a document of a description specified in an order made by the Assembly.
- (3) For the purposes of subsection (2)(b) a contract is a relevant sub-contract if its performance fulfils, or contributes to the fulfilment of, an obligation to supply goods or services to the body in another contract.
- (4) An auditor may require a person whom he thinks has information of the kind mentioned in subsection (5)—

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- (a) to give him any assistance, information and explanation which the auditor thinks necessary for the purposes of his functions under this Chapter;
  - (b) to attend before him in person to—
    - (i) give the assistance, information or explanation, or
    - (ii) produce any document which is held or controlled by the person and to which the right conferred by subsection (1) applies.
- (5) The information is information which relates to—
- (a) a local government body in Wales in relation to which the auditor has functions under this Chapter;
  - (b) a document to which the right conferred by subsection (1) applies;
  - (c) a person who holds or controls such a document.
- (6) Every local government body in Wales must provide an auditor with every facility and all information which he may reasonably need for the purposes of his functions under this Chapter.
- (7) Before making an order under subsection (2)(c) the Assembly must consult—
- (a) the Auditor General for Wales, and
  - (b) any associations of local authorities in Wales which appear to it to be concerned.

## **19 Auditors' rights to documents and information: offences**

- (1) A person commits an offence if without reasonable excuse he fails to comply with a requirement imposed by an auditor under section 18(4).
- (2) A person guilty of an offence under subsection (1) is liable on summary conviction—
- (a) to a fine not exceeding level 3 on the standard scale, and
  - (b) to an additional fine not exceeding £20 for each day on which the offence continues after he has been convicted of it.
- (3) Subsection (4) applies if—
- (a) a person is convicted of an offence under subsection (1), and
  - (b) expenses are incurred by an auditor in connection with proceedings for the offence.
- (4) The expenses may be recovered from the convicted person or an appropriate person, to the extent that they are not recovered from any other source.
- (5) An appropriate person is a person who controlled the document referred to in section 18(5) at the time the requirement was imposed.

## **20 Fees for audit**

- (1) The Auditor General for Wales must prescribe a scale or scales of fees payable for one or more financial years in respect of the audit of accounts of local government bodies in Wales under this Chapter.
- (2) Before prescribing a scale of fees under subsection (1) the Auditor General for Wales must consult—
- (a) any associations of local authorities in Wales which appear to the Auditor General for Wales to be concerned, and

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- (b) any bodies of accountants which appear to the Auditor General for Wales to be appropriate.
- (3) In prescribing a scale of fees under subsection (1) for a financial year the Auditor General for Wales may take account of the expenses he expects to incur in the financial year in undertaking or promoting studies under sections 41 and 42.
- (4) A local government body in Wales must, subject to subsection (5), pay to the Auditor General for Wales the fee payable in respect of the audit in accordance with the appropriate scale.
- (5) If it appears to the Auditor General for Wales that the work involved in a particular audit differed substantially from that envisaged by him when prescribing the appropriate scale, the Auditor General for Wales may charge a fee which differs from that referred to in subsection (4).
- (6) The fee payable in respect of an audit under this Chapter is the same whether or not the auditor is a member of the staff of the Auditor General for Wales.

## **21 Fees prescribed by Assembly**

- (1) The Assembly may, if it considers it necessary or desirable to do so, prescribe by regulations a scale or scales of fees to have effect in place of a scale or scales prescribed by the Auditor General for Wales under section 20(1).
- (2) A scale of fees prescribed under subsection (1) has effect for the period specified in relation to it in the regulations.
- (3) Subsection (4) applies if—
  - (a) a scale of fees is prescribed under subsection (1) in place of a scale prescribed by the Auditor General for Wales, and
  - (b) the scale prescribed by the Auditor General for Wales would otherwise be the appropriate scale for the purposes of section 20(4) and (5).
- (4) The references to the appropriate scale in section 20(4) and (5) are to be read as references to the appropriate scale prescribed under subsection (1) of this section.
- (5) Before making regulations under subsection (1) the Assembly must consult—
  - (a) the Auditor General for Wales,
  - (b) any associations of local authorities in Wales which appear to it to be concerned, and
  - (c) any bodies of accountants which appear to it to be appropriate.

### *Auditors' reports and recommendations*

## **22 Immediate and other reports in public interest**

- (1) In auditing accounts of a body under this Chapter, an auditor must consider whether, in the public interest, he should make a report on any matter which comes to his notice in the course of the audit, in order for it to be—
  - (a) considered by the body, or
  - (b) brought to the attention of the public.

- (2) If the auditor considers that, in the public interest, he should make a report such as is mentioned in subsection (1), he must consider whether the public interest requires the matter to be made the subject of an immediate report.
- (3) If the auditor considers that the public interest requires the matter to be made the subject of an immediate report, he must make the report immediately.
- (4) If the auditor considers that the public interest does not require the matter to be made the subject of an immediate report, he must make the report at the conclusion of the audit.
- (5) In a case within subsection (3), the auditor must send the report to the body, and a copy of the report to the Auditor General for Wales, immediately after making it.
- (6) In a case within subsection (4), the auditor must send the report to the body, and a copy of the report to the Auditor General for Wales, before the end of the period of 14 days starting with the day on which he concludes the audit.

## **23 General report**

- (1) This section applies if an auditor has concluded his audit of a body's accounts under this Chapter.
- (2) If a statement of accounts is required to be prepared by regulations under section 39, the auditor must enter on the statement—
  - (a) a certificate that he has completed the audit in accordance with this Chapter, and
  - (b) his opinion on the statement.
- (3) In any other case, the auditor must enter on the accounts—
  - (a) a certificate that he has completed the audit in accordance with this Chapter, and
  - (b) his opinion on the accounts.
- (4) But if an auditor makes a report under section 22 at the conclusion of the audit, he may include the certificate and opinion referred to in subsections (2) and (3) in the report instead of making an entry on the statement or accounts.

## **24 Consideration of reports in public interest**

- (1) This section applies if an auditor makes a report under section 22 on a matter which comes to his notice in the course of the audit of the accounts of a body.
- (2) The body must take the report into consideration—
  - (a) as soon as practicable after receiving it, if the body is a body mentioned in subsection (3);
  - (b) in accordance with section 25, in any other case.
- (3) The bodies referred to in subsection (2)(a) are—
  - (a) a port health authority;
  - (b) a conservation board;
  - (c) an internal drainage board;
  - (d) a local probation board.

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- (4) The agenda supplied to members of the body for the meeting of the body at which the report is to be considered must be accompanied by the report.
- (5) Subsection (6) applies to these powers—
- (a) the power under section 1(4)(b) of the Public Bodies (Admission to Meetings) Act 1960 (c. 67) to exclude items from the matter supplied under that section (supply of agenda etc. to newspapers);
  - (b) the power under section 100B(2) of the Local Government Act 1972 (c. 70) to—
    - (i) exclude documents from the documents open to inspection under section 100B(1) of that Act, or
    - (ii) exclude items from the matter supplied under section 100B(7) of that Act (public access to agenda and reports before meetings and supply of agenda etc. to newspapers).
- (6) The powers mentioned in subsection (5) do not include power to exclude the report.
- (7) Part 5A of the Local Government Act 1972 has effect in relation to the report as if section 100C(1)(d) of that Act (public access to copies of reports for 6 years after meeting) were not limited to so much of the report as relates to an item during which the meeting was open to the public.

## **25 Procedure for consideration of reports and recommendations**

- (1) This section applies if a body is required under section 24(2)(b) to take a report into consideration in accordance with this section.
- (2) This section also applies if an auditor of any accounts of a local government body in Wales—
- (a) sends to the body a written recommendation, and
  - (b) states in the document containing the recommendation that in his opinion the recommendation should be considered in accordance with this section.
- (3) But subsection (2) does not apply if the body is—
- (a) a port health authority;
  - (b) a conservation board;
  - (c) an internal drainage board;
  - (d) a local probation board.
- (4) If this section applies, the body must consider the report or recommendation at a meeting held by it before the end of the period of one month starting with the day on which the auditor sends the report or recommendation to it.
- (5) At the meeting the body must decide—
- (a) if a report under section 22 is considered at the meeting, whether the report requires it to take any action;
  - (b) if a recommendation within subsection (2) is considered at the meeting, whether the recommendation is to be accepted;
  - (c) what action (if any) to take in response to the report or recommendation.
- (6) An auditor may extend the period of one month mentioned in subsection (4) in relation to a report or recommendation if he is satisfied that it is reasonable to allow the body



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more time to comply with its duties under subsections (4) and (5) in relation to the report or recommendation.

- (7) A period may be extended under subsection (6) more than once.
- (8) Nothing in section 101 of the Local Government Act 1972 (c. 70) (delegation of functions) applies to a duty imposed on a body by this section.
- (9) This section does not affect any duties (so far as they relate to the subject-matter of a report or recommendation) imposed by or under—
  - (a) this Act;
  - (b) sections 114 to 116 of the Local Government Finance Act 1988 (c. 41) (reports by chief finance officers);
  - (c) section 5 of the Local Government and Housing Act 1989 (c. 42) (functions of monitoring officers);
  - (d) any other enactment.

## **26 Publicity for meetings under section 25**

- (1) This section applies if a body is required under section 25(4) to hold a meeting.
- (2) The meeting may be held on a particular day only if, at least seven clear days before that day, a notice complying with subsection (3) has been published in a newspaper circulating in the area of the body.
- (3) A notice complies with this subsection if it—
  - (a) states the time and place of the meeting,
  - (b) indicates that the meeting is to be held to consider an auditor’s report or recommendation (as the case may be), and
  - (c) describes the subject-matter of the report or recommendation.
- (4) As soon as practicable after the meeting the body must—
  - (a) ensure that the auditor is notified of the decisions made by the body under section 25(5),
  - (b) obtain the approval of the auditor to a written summary of those decisions (“the approved summary”), and
  - (c) ensure that a notice containing the approved summary is published in one or more newspapers circulating in the area of the body.
- (5) The approved summary need not summarise any decision made at the meeting while the public were excluded—
  - (a) under section 100A(2) of the Local Government Act 1972 (confidential information);
  - (b) in pursuance of a resolution under section 100A(4) of that Act (exempt information);
  - (c) in pursuance of a resolution under section 1(2) of the Public Bodies (Admission to Meetings) Act 1960 (c. 67) (protection of public interest).
- (6) But if sections 100C and 100D of the Local Government Act 1972 (c. 70) (availability for inspection after meeting of minutes, background papers and other documents) apply in relation to the meeting the approved summary must indicate the documents in relation to the meeting which are open for inspection under those sections.

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- (7) This section does not affect any provisions made in relation to meetings of a body by section 24(4) to (7) or by or under—
- (a) the Local Government Act 1972;
  - (b) the Public Bodies (Admission to Meetings) Act 1960;
  - (c) any other enactment.

## **27 Additional publicity for immediate reports**

- (1) This section applies where under section 22(5) an auditor has sent a report made under section 22(3) to a body.
- (2) From the time when the report is received by the body any member of the public may—
  - (a) inspect the report at all reasonable times without payment;
  - (b) make a copy of the report or any part of it at all reasonable times without payment;
  - (c) require the body to supply him on payment of a reasonable sum with a copy of the report or any part of it.
- (3) On receiving a report sent to it under section 22(5) a body must immediately—
  - (a) ensure that a notice is published in one or more newspapers circulating in the area of the body, and
  - (b) supply a copy of the report to every member of the body.
- (4) The notice published under subsection (3) must—
  - (a) identify the subject-matter of the report, and
  - (b) state that any member of the public may inspect the report and make a copy of it or any part of it between such times and at such place or places as are specified in the notice.
- (5) An auditor who has made a report under section 22(3) may—
  - (a) notify any person that he has made the report;
  - (b) supply a copy of the report or of any part of it to any person.
- (6) A person who has custody of a report made under section 22(3) commits an offence if—
  - (a) he obstructs a person in the exercise of a right conferred by subsection (2) (a) or (b), or
  - (b) he refuses to comply with a requirement under subsection (2)(c).
- (7) A person guilty of an offence under subsection (6) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (8) A body commits an offence if it fails to comply with a requirement of subsection (3).
- (9) A body guilty of an offence under subsection (8) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (10) Nothing in this section affects the operation of section 24(4) to (7).

## **28 Additional publicity for non-immediate reports**

- (1) This section applies where under section 22(6) an auditor has sent a report made under section 22(4) to a body.
- (2) The auditor may—
  - (a) notify any person that he has made the report;
  - (b) publish the report;
  - (c) supply a copy of the report or any part of it to any person.
- (3) From the time when the report is sent to the body—
  - (a) the auditor must ensure that any member of the public may—
    - (i) inspect the report at all reasonable times without payment;
    - (ii) make a copy of the report or any part of it at all reasonable times without payment;
  - (b) any member of the public may require the auditor to supply him on payment of a reasonable sum with a copy of the report or any part of it.
- (4) From the end of the period of one year starting with the day on which the report is sent to the body, the obligations of the auditor under subsection (3)—
  - (a) cease to be his obligations, but
  - (b) become obligations of the Auditor General for Wales instead.

### *Public inspection etc and action by auditor*

## **29 Inspection of statements of accounts and auditors' reports**

- (1) A local government elector for the area of a local government body in Wales may—
  - (a) at all reasonable times and without payment inspect and make a copy of any statement of accounts prepared by the body under regulations made under section 39;
  - (b) at all reasonable times and without payment inspect and make a copy of any report (other than a report under section 22(3)) made to the body by an auditor;
  - (c) require a copy of a statement or report falling within paragraph (a) or (b) to be delivered to him on payment of a reasonable sum for each copy.
- (2) A person who has custody of a document falling within paragraph (a) or (b) of subsection (1) commits an offence if—
  - (a) he obstructs a person in the exercise of a right under this section to inspect or make a copy of the document, or
  - (b) he refuses to supply a copy of the document to a person entitled to the copy under subsection (1)(c).
- (3) A person guilty of an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (4) In this section references to a copy of a document include a copy of any part of it.

## **30 Inspection of documents and questions at audit**

- (1) At an audit of accounts under this Chapter an interested person may—

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- (a) inspect the accounts to be audited and all books, deeds, contracts, bills, vouchers and receipts relating to them;
  - (b) make a copy of all or any part of the accounts and of any of the other documents mentioned in paragraph (a).
- (2) At the request of a local government elector for any area to which accounts to be audited under this Chapter relate, the auditor of those accounts must give the elector or any representative of his an opportunity to question the auditor about the accounts.
- (3) But nothing in this section entitles a person—
- (a) to inspect any accounts or other document relating to a body to the extent that the accounts contain, or the document contains, personal information;
  - (b) to require any personal information to be disclosed by a body's auditor in answer to any question.
- (4) In subsection (3) “personal information” means information relating to an individual which is available to the body for reasons connected with either of these—
- (a) the fact that the individual holds or has held an office or employment under the body;
  - (b) the fact that payments or other benefits are or have been made or provided to the individual by the body in respect of an office or employment under another person.
- (5) For the purposes of subsection (4) payments made or benefits provided to an individual in respect of an office or employment include any payment made or benefit provided to an individual in respect of his ceasing to hold the office or employment.

### **31 Right to make objections at audit**

- (1) At an audit of accounts under this Chapter a local government elector for the area to which the accounts relate, or any representative of his, may make objections before the auditor as to—
- (a) any matter in respect of which the auditor has a power to apply for a declaration under section 32;
  - (b) any other matter in respect of which the auditor has the power to make a report under section 22.
- (2) A local government elector proposing to make an objection under subsection (1) must—
- (a) give written notice to the auditor of the proposed objection and the grounds on which it is to be made, and
  - (b) at the same time, send a copy of the notice to the body whose accounts are being audited.

### **32 Declaration that item of account is unlawful**

- (1) Where it appears to an auditor carrying out an audit under this Chapter that an item of account is contrary to law, the auditor may apply to the court for a declaration that the item is contrary to law.
- (2) On an application under this section the court may make or refuse to make the declaration applied for.

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- (3) If the court makes the declaration applied for it may also order rectification of the accounts.
- (4) If an auditor decides not to make an application for a declaration under this section in relation to an item of account, he must notify a person who has made an objection under section 31(1)(a) in relation to the item of account of his decision.
- (5) Subsection (4) does not apply if the person who has made the objection has failed to comply with section 31(2).
- (6) A person notified under subsection (4) of an auditor's decision may require the auditor to state in writing the reasons for his decision before the end of the permitted period, which is 14 days starting with the day on which the person is notified of the auditor's decision.
- (7) A person who receives reasons for an auditor's decision under subsection (6) may appeal to the court against the decision before the end of the permitted period, which is 28 days starting with the day on which he receives the reasons.
- (8) On an appeal under subsection (7) the court has the same powers in relation to the item of account as it would have if the auditor had applied to the court for a declaration under subsection (1) in relation to the item of account.
- (9) On an application or appeal under this section relating to the accounts of a body, the court may make such order as it thinks fit for the payment by the body of expenses incurred in connection with the application or appeal by—
  - (a) the auditor;
  - (b) the person by whom the appeal is brought.
- (10) The High Court and the county courts have jurisdiction for the purposes of this section.

*Prevention of unlawful expenditure etc*

**33 Advisory notices**

- (1) An auditor of accounts of a local government body in Wales may issue a notice under this section (an "advisory notice") if he has reason to believe that one or more of the requirements specified in subsection (2) is met.
- (2) The requirements are that—
  - (a) the body or an officer of the body is about to make or has made a decision which involves or would involve the body incurring expenditure which is unlawful;
  - (b) the body or an officer of the body is about to take or has begun to take a course of action which, if pursued to its conclusion, would be unlawful and likely to cause a loss or deficiency;
  - (c) the body or an officer of the body is about to enter an item of account, the entry of which is unlawful.
- (3) For the purposes of this section and section 34 the actions of any of these are to be treated as the actions of a body—
  - (a) a committee or sub-committee of the body;

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- (b) a person (other than an officer of the body) authorised to act on behalf of the body.
- (4) An advisory notice is a notice which meets these requirements—
- (a) it is addressed to the body or officer;
  - (b) it specifies which of the requirements specified in subsection (2) is met and the decision, course of action or item of account to which the notice relates;
  - (c) it specifies that the notice will take effect on the day a copy of it is served on the person to whom it is addressed;
  - (d) it requires the body or officer to give the auditor of the body's accounts not less than the specified period of notice in writing of the intention of the body or officer to—
    - (i) make or implement the decision to which the notice relates,
    - (ii) take or continue to take the course of action to which the notice relates, or
    - (iii) enter the item of account to which the notice relates.
- (5) For the purposes of subsection (4)(d) the specified period of notice is the period (not exceeding 21 days) specified in the advisory notice.
- (6) A copy of an advisory notice—
- (a) must be served on the body to which, or to an officer of which, it is addressed;
  - (b) if the notice is addressed to an officer, must be served on him;
  - (c) may be served on any other person considered appropriate by the auditor by whom the notice is issued.
- (7) The auditor by whom an advisory notice is issued must before the end of the required period serve a statement of his reasons for the belief referred to in subsection (1) on—
- (a) the body, and
  - (b) if the advisory notice is addressed to an officer of the body, the officer.
- (8) The required period for the purposes of subsection (7) is 7 days starting on the day on which a copy of the advisory notice was served on the person to whom it is addressed.
- (9) A document to be served on an officer of a body under this section must be served on him by addressing it to him and—
- (a) delivering it to him at an office of the body at which he is employed,
  - (b) leaving it at such an office, or
  - (c) sending it by post to such an office.
- (10) An advisory notice may at any time be withdrawn by the person who for the time being is the auditor of the body to which, or to an officer of which, the notice was addressed.
- (11) The auditor by whom an advisory notice is withdrawn must give notice in writing of the withdrawal to any body or person on whom a copy of the advisory notice was served under subsection (6).
- (12) If two or more auditors are appointed in relation to a body's accounts an advisory notice may be issued or withdrawn by the auditors acting jointly or by one of the auditors determined by them.

### **34 Effect of an advisory notice**

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

### **35 Advisory notices: legal actions**

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

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*Status: This is the original version (as it was originally enacted).*

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### **36 Power of auditor to make a claim for judicial review**

- (1) An auditor appointed to audit accounts of a local government body in Wales may make a claim for judicial review with respect to a decision of the body or a failure of the body to act, if it is reasonable to believe that the decision or failure to act would have an effect on the body's accounts.
- (2) Subsection (1) is subject to section 31(3) of the Supreme Court Act 1981 (c. 54) (no claim for judicial review without permission of court).
- (3) The existence of the powers conferred on an auditor under this Part is not a ground for refusing—
  - (a) a claim falling within subsection (1), or
  - (b) an application for permission to make a claim falling within subsection (1).
- (4) On a claim by an auditor for judicial review with respect to a decision of a body or a failure of a body to act, the court may make any order it thinks fit for the payment by the body of expenses incurred by the auditor in connection with the claim.

#### *Miscellaneous*

### **37 Extraordinary audit**

- (1) The Auditor General for Wales may direct an auditor to hold an extraordinary audit of the accounts of a local government body in Wales if the condition in subsection (2) or the condition in subsection (3) is met.
- (2) The condition is that it appears to the Auditor General for Wales to be desirable to hold an extraordinary audit of the body's accounts.
- (3) The condition is that an application for an extraordinary audit of the body's accounts is made by a local government elector for the area of the body.
- (4) The Assembly may require the Auditor General for Wales to direct an auditor to hold an extraordinary audit of the accounts of a local government body in Wales if it appears to the Assembly to be desirable in the public interest for an extraordinary audit of the body's accounts to be held.
- (5) These provisions apply to an extraordinary audit under this section as they apply to an ordinary audit under this Chapter—
  - (a) section 15;
  - (b) sections 17 to 19;
  - (c) sections 22 to 28;
  - (d) sections 31 and 32.
- (6) An extraordinary audit of a body's accounts may be held under this section only if 3 clear days' notice in writing of the audit is given to the body.
- (7) The expenditure incurred in holding an extraordinary audit of a body's accounts under this section must be met in the first instance by the Auditor General for Wales.
- (8) The Auditor General for Wales may recover all or part of the expenditure from the body.



### **38 Audit of accounts of officers**

- (1) This section applies if an officer of a local government body in Wales receives money or other property—
  - (a) on behalf of the body, or
  - (b) for which he ought to account to the body.
- (2) The auditor of the body's accounts must audit the officer's accounts.
- (3) These provisions apply with the necessary modifications to the accounts and audit—
  - (a) section 13(1);
  - (b) sections 17 to 24;
  - (c) sections 27 to 32;
  - (d) section 37;
  - (e) section 39.

### **39 Accounts and audit regulations**

- (1) The Assembly may by regulations applying to local government bodies in Wales make provision with respect to—
  - (a) the keeping of accounts;
  - (b) the form, preparation and certification of accounts and of statements of accounts;
  - (c) the deposit of the accounts of a body at the offices of the body or at another place;
  - (d) the publication of information relating to accounts and the publication of statements of accounts;
  - (e) the exercise of any rights of objection or inspection conferred by section 29, 30 or 31 and the steps to be taken by a body for informing local government electors for the area of the body of those rights.
- (2) Before making any regulations under this section the Assembly must consult—
  - (a) the Auditor General for Wales,
  - (b) any associations of local authorities in Wales which appear to it to be concerned, and
  - (c) any bodies of accountants which appear to it to be appropriate.
- (3) A person commits an offence if—
  - (a) without reasonable excuse he contravenes a provision of regulations under this section, and
  - (b) the regulations declare that contravention of the provision is an offence.
- (4) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (5) Subsection (6) applies if—
  - (a) a person is convicted of committing an offence under subsection (3) in relation to a body, and
  - (b) expenses are incurred by an auditor in connection with proceedings for the offence.

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*Status: This is the original version (as it was originally enacted).*

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- (6) The expenses may be recovered from the convicted person or the body, to the extent that they are not recovered from any other source.

#### **40 Documents relating to police authorities**

- (1) If the Auditor General for Wales receives a copy of a report under section 22(5) or (6) and the report relates to a police authority for a police area in Wales, he must send a copy of the report to the Secretary of State and the Assembly.
- (2) If the Auditor General for Wales has sent a document (or a copy of a document) relating to one or more police authorities for police areas in Wales to a police authority for a police area in Wales, he may send a copy of the document to the Secretary of State and the Assembly.