

SCHEDULES

SCHEDULE 8

Section 145

AUDITOR GENERAL FOR WALES

Appointment

- 1 (1) The Auditor General is to be appointed by Her Majesty on the nomination of the Assembly.
- (2) No nomination is to be made until the Assembly is satisfied that reasonable consultation has been undertaken with such bodies as appear to the Assembly to represent the interests of local government bodies in Wales.
- (3) For the purposes of sub-paragraph (2) a body is a local government body in Wales at any time if at that time it is specified in section 12(1) of the Public Audit (Wales) Act 2004 (c. 23).
- (4) The validity of any act of a person appointed as Auditor General is not affected by any defect in the person's nomination by the Assembly.

Tenure

- 2 (1) Subject as follows, a person appointed as Auditor General holds office until the end of the period for which the person was appointed.
- (2) Her Majesty may relieve a person from office as Auditor General before the end of the period for which the person was appointed—
 - (a) at the person's request, or
 - (b) on Her Majesty being satisfied that the person is incapable for medical reasons of performing the duties of the office and of requesting to be relieved of it.
- (3) Her Majesty may remove a person from office as Auditor General before the end of the period for which the person was appointed on the making of a recommendation, on the ground of the person's misbehaviour, that Her Majesty should do so.
- (4) A recommendation for the removal of a person from office as Auditor General may not be made unless—
 - (a) the Assembly has resolved that the recommendation should be made, and
 - (b) the resolution of the Assembly is passed on a vote in which the number of Assembly members voting in favour of it is not less than two-thirds of the total number of Assembly seats.

Independence and status

- 3 (1) The Auditor General is not, in the exercise of any functions, subject to the direction or control of the Assembly or the Welsh Assembly Government.

Status: This is the original version (as it was originally enacted).

- (2) The Auditor General is not to be regarded as holding office under Her Majesty or as exercising any functions on behalf of the Crown; but the Auditor General is to be taken to be a Crown servant for the purposes of the Official Secrets Act 1989 (c. 6).

Corporation sole

- 4 The person for the time being holding the office of Auditor General shall by the name of that office be a corporation sole.

Documents

- 5 (1) The application of the seal of the Auditor General is to be authenticated by the signature of—
- (a) the Auditor General, or
 - (b) any member of the Auditor General’s staff authorised by the Auditor General (generally or specially) for that purpose.
- (2) A document purporting to be duly executed under the seal of the Auditor General or to be signed on the Auditor General’s behalf may be received in evidence and, unless the contrary is proved, is to be taken to be so executed or signed.

Remuneration

- 6 (1) The Assembly must—
- (a) pay the Auditor General such salary and any such allowances, and
 - (b) make any such payments towards the provision of superannuation benefits for or in respect of the Auditor General,
- as may be provided for by or under the terms of the Auditor General’s appointment.
- (2) The Assembly must pay to or in respect of a person who has ceased to hold office as Auditor General such amounts (if any) by way of—
- (a) pension or gratuities, or
 - (b) provision for those benefits,
- as may have been provided for by or under the terms of the Auditor General’s appointment.
- (3) Schedule 1 to the Superannuation Act 1972 (c. 11) (offices to which section 1 of that Act applies) is to continue to have effect with the insertion in the list of “Offices” of the entry relating to the Auditor General (originally made by section 91(3) of the Government of Wales Act 1998 (c. 38)).
- (4) The Assembly must make payments to the Minister for the Civil Service, at such times as the Minister for the Civil Service may determine, of such amounts as may be so determined in respect of—
- (a) the provision of pensions, allowances or gratuities by virtue of section 1 of the Superannuation Act 1972 to or in respect of any person who holds or has ceased to hold office as Auditor General, and
 - (b) the expenses incurred in administering those pensions, allowances and gratuities.
- (5) Sums required for the making of payments under sub-paragraphs (1), (2) and (4) are to be charged on the Welsh Consolidated Fund.

Staff

- 7
- (1) The Auditor General may appoint such staff or secure the provision of such services as the Auditor General considers necessary for assisting in the exercise of the Auditor General's functions.
 - (2) The staff of the Auditor General are to be appointed on such terms and conditions as the Auditor General may determine.
 - (3) The Auditor General must pay the staff such remuneration as may be provided for by or under the terms of their appointment.
 - (4) Schedule 1 to the Superannuation Act 1972 (offices to which section 1 of that Act applies) is to continue to have effect with the insertion in the list of "Other bodies" of the entry relating to Employment as a member of the staff of the Auditor General (originally made by section 92(5) of the Government of Wales Act 1998).
 - (5) The Auditor General must make payments to the Minister for the Civil Service, at such times as the Minister for the Civil Service may determine, of such amounts as may be so determined in respect of—
 - (a) the provision of pensions, allowances or gratuities by virtue of section 1 of the Superannuation Act 1972 to or in respect of any persons who are or have been members of the staff of the Auditor General, and
 - (b) the expenses incurred in administering those pensions, allowances and gratuities.
 - (6) No member of the staff of the Auditor General is to be regarded as holding office under Her Majesty or as exercising any functions on behalf of the Crown; but each member of the staff of the Auditor General is to be taken to be a Crown servant for the purposes of the Official Secrets Act 1989 (c. 6)

Exercise of functions by staff etc.

- 8
- (1) Any function of the Auditor General may be exercised by—
 - (a) a member of the Auditor General's staff, or
 - (b) a person providing services to the Auditor General,who is authorised by the Auditor General for that purpose.
 - (2) Any function of the Auditor General may be exercised jointly by the Auditor General and a person providing services to the Auditor General who is authorised by the Auditor General for that purpose.
 - (3) Any provision made under sub-paragraph (1) for the exercise of any function does not affect the responsibility of the Auditor General on whose behalf the function is exercised.
 - (4) An authority under sub-paragraph (1) to certify or report on accounts (or statements of accounts) within sub-paragraph (5)—
 - (a) extends only to accounts (or statements) which the Presiding Officer has certified to the Assembly are accounts (or statements) which the Auditor General is unable to certify, or on which the Auditor General is unable to report, in person, and
 - (b) ceases when the office of Auditor General becomes vacant.

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

- (5) Accounts (or statements of accounts) are within this sub-paragraph if, in accordance with provision made by or under this or any other Act, they—
- (a) fall to be examined by the Auditor General, and
 - (b) are required to be laid before the Assembly.

Special finance provisions

- 9
- (1) Any sums payable by the Auditor General in consequence of a breach, in the performance of any of the Auditor General's functions, of any contractual or other duty are to be charged on the Welsh Consolidated Fund.
 - (2) And sub-paragraph (1) applies whether the breach occurs by reason of an act or omission of—
 - (a) the Auditor General,
 - (b) a member of the Auditor General's staff, or
 - (c) any other person assisting the Auditor General in the exercise of the Auditor General's functions.
 - (3) The Auditor General may retain income within sub-paragraph (4) (rather than pay it into the Welsh Consolidated Fund) for use in connection with the exercise of the functions conferred or imposed by—
 - (a) Part 1 of the Local Government Act 1999 (c. 27) (best value audits and inspections), or
 - (b) Part 2 of the Public Audit (Wales) Act 2004 (c. 23) (local government audit).
 - (4) The following income is within this sub-paragraph—
 - (a) fees charged by the Auditor General by virtue of Part 1 of the Local Government Act 1999 (c. 27),
 - (b) grants made to the Auditor General under section 33(3)(b) of that Act, and
 - (c) fees charged by the Auditor General by virtue of Part 2 of the Public Audit (Wales) Act 2004 (including those charged as a result of paragraph 11(3)(c)).

Borrowing

- 10 The Auditor General may borrow sums in sterling (by way of overdraft or otherwise) to be applied for the purpose of meeting a temporary excess of expenditure over sums otherwise available to meet it.

Fees

- 11
- (1) The Auditor General may charge a fee for auditing a person's accounts.
 - (2) Where the Auditor General—
 - (a) provides services under paragraph 18(3)(b) by carrying out an examination in relation to a person, or
 - (b) provides services under section 145A of the Government of Wales Act 1998 (c. 38) (studies for improving economy etc. in services) at the request of a person,
 the Auditor General may charge the person a fee not exceeding the full cost of providing those services.
 - (3) Where the Auditor General—

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

- (a) provides services to a body under paragraph 20,
 - (b) provides services at the request of a body under section 145B of the Government of Wales Act 1998 (studies at request of educational bodies), or
 - (c) provides services at the request of a body under section 44 of the Public Audit (Wales) Act 2004 (studies at request of local government bodies in Wales),
- the Auditor General must charge that body a fee which covers the full cost of providing those services.

Estimates

- 12 (1) For each financial year the Auditor General must—
- (a) prepare an estimate of the income and expenses of the office of Auditor General, and
 - (b) submit the estimate to the Audit Committee.
- (2) Each estimate must be submitted to the Audit Committee at least five months before the beginning of the financial year to which it relates.
- (3) The Audit Committee must—
- (a) examine each estimate submitted to it, and
 - (b) (having done so) lay the estimate before the Assembly with any modifications which the Audit Committee considers appropriate.
- (4) Before laying an estimate before the Assembly with modifications the Audit Committee must—
- (a) consult the Auditor General, and
 - (b) take into account any representations which the Auditor General may make.
- (5) Nothing in this paragraph authorises the Audit Committee—
- (a) to examine that part of any estimate which relates to estimated income or expenses of the office of Auditor General to which sub-paragraph (6) applies, or
 - (b) to lay an estimate before the Assembly with modifications relating to such estimated income or expenses.
- (6) This sub-paragraph applies to estimated income or expenses relating to—
- (a) Part 1 of the Local Government Act 1999 (c. 27) (best value audits and inspections),
 - (b) section 33(3)(b) of that Act (grants to the Auditor General), or
 - (c) Part 2 of the Public Audit (Wales) Act 2004 (c. 23) (local government audit), apart from section 44.

Accounts

- 13 (1) The Auditor General must, for each financial year, prepare accounts in accordance with directions given to the Auditor General by the Treasury.
- (2) The directions which the Treasury may give under sub-paragraph (1) include, in particular, directions as to—
- (a) the information to be contained in the accounts and the manner in which it is to be presented,

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

- (b) the methods and principles in accordance with which the accounts are to be prepared, and
- (c) the additional information (if any) that is to accompany the accounts.

Auditor

- 14 (1) The Assembly must appoint an auditor of the accounts of the Auditor General.
- (2) A person is eligible for appointment under this paragraph 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 an approved European body of accountants.
- (3) An “approved European body of accountants” is a body of accountants which—
- (a) is established in the United Kingdom or another state which is either a member State or a non-member EEA State, and
 - (b) is for the time being approved by the Welsh Ministers by order.
- (4) “Non-member 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) but which is not a member State.
- (5) If a person appointed as the auditor ceases to be a person who could be so appointed—
- (a) the person’s appointment is ended, and
 - (b) the person ceases to be the auditor.
- (6) The auditor is to be appointed on such terms and conditions as the Assembly may determine.
- (7) The Auditor General must pay the auditor such remuneration as may be provided for by or under the terms of the auditor’s appointment.
- (8) A statutory instrument containing an order under sub-paragraph (3)(b) is subject to annulment in pursuance of a resolution of the Assembly.

Audit of accounts

- 15 (1) The accounts which the Auditor General is required to prepare under paragraph 13 for a financial year must be submitted by the Auditor General (after having signed them) to the auditor appointed under paragraph 14 no later than five months after the end of that financial year.
- (2) The auditor must carry out an audit of any accounts submitted to the auditor under sub-paragraph (1).
- (3) On completing the audit the auditor must—
- (a) certify the accounts, and
 - (b) lay the accounts and the auditor’s report on them before the Assembly.
- (4) The auditor has a right of access at all reasonable times to every document which appears to the auditor to be necessary for the purposes of the audit of the accounts.
- (5) The auditor may—

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

- (a) require any person holding or accountable for any of those documents to provide any assistance, information or explanation which the auditor reasonably thinks necessary for those purposes, and
 - (b) require the Auditor General to provide the auditor, at times specified by the auditor, with accounts of such of the transactions of the Auditor General as the auditor may specify.
- (6) The auditor—
- (a) may carry out examinations into the economy, efficiency and effectiveness with which the Auditor General has used resources in discharging the Auditor General’s functions, and
 - (b) may lay before the Assembly a report of the results of any such examinations.
- (7) For the purposes of carrying out such examinations, the auditor—
- (a) has a right of access at all reasonable times to every document in the possession, or under the control, of the Auditor General which the auditor reasonably requires for that purpose, and
 - (b) may require any person holding or accountable for any of those documents to provide any assistance, information or explanation which the auditor reasonably thinks necessary for that purpose.

Accounting officer

- 16 (1) The accounting officer for the Wales Audit Office is the Auditor General.
- (2) “The Wales Audit Office” means the Auditor General and the members of the staff of the Auditor General.
- (3) But the Audit Committee may designate a member of the staff of the Auditor General to be the accounting officer if and for so long as —
- (a) the Auditor General is incapable of discharging the responsibilities of the accounting officer, or
 - (b) the office of Auditor General is vacant.
- (4) The accounting officer for the Wales Audit Office has, in relation to the accounts of the Auditor General and the finances of the Wales Audit Office, the responsibilities which are from time to time specified by the Audit Committee.
- (5) If requested to do so by the House of Commons Committee of Public Accounts, the Audit Committee may—
- (a) on behalf of the Committee of Public Accounts take evidence from the accounting officer for the Wales Audit Office, and
 - (b) report to the Committee of Public Accounts and transmit to that Committee any evidence so taken.

Access to documents

- 17 (1) The Auditor General has a right of access at all reasonable times to every document relating to a relevant person which appears to the Auditor General necessary—
- (a) for the purposes of the Auditor General’s examination of any auditable accounts,
 - (b) for the purposes of undertaking studies under section 145A (studies for improving economy etc. in services provided by relevant bodies) or 145C

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

- (studies relating to registered social landlords) of the Government of Wales Act 1998 (c. 38), or
- (c) for the purposes of carrying out, in accordance with any provision made by or by virtue of this or any other Act, other examinations or studies into the economy, efficiency and effectiveness with which a person has used resources in discharging the person’s functions.
- (2) The documents relating to a relevant person to which the right conferred by sub-paragraph (1) applies include (in particular)—
- (a) a document which is in the possession, or under the control, of a person who has received financial assistance from the relevant person 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 in the possession, or under the control, of a person who has supplied goods or services to the relevant person in pursuance of a contract to which the relevant person was party or has supplied goods or services in pursuance of a relevant sub-contract, and
- (c) a document of a description specified in an order made by the Welsh Ministers.
- (3) The Auditor General may require a person whom the Auditor General thinks has information of the kind mentioned in sub-paragraph (4)—
- (a) to give the Auditor General any assistance, information and explanation which the Auditor General thinks necessary for any of the purposes mentioned in sub-paragraph (1),
- (b) to attend before the Auditor General in person to give the assistance, information or explanation, or to produce any document which is in the possession, or under the control, of the person and to which the right conferred by that sub-paragraph applies, or
- (c) to provide any facility which the Auditor General may reasonably require for any of the purposes mentioned in that sub-paragraph.
- (4) The information referred to in sub-paragraph (3) is information which relates to—
- (a) a relevant person,
- (b) a document to which the right conferred by sub-paragraph (1) applies, or
- (c) a person who possesses or controls such a document.
- (5) The Auditor General may, for the purposes of an examination of any auditable accounts, require a relevant person to provide the Auditor General, at times specified by the Auditor General, with accounts of such of the person’s transactions as the Auditor General may specify.
- (6) For the purposes of sub-paragraph (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 relevant person in another contract.
- (7) In this paragraph “auditable accounts” means any accounts or statement of accounts falling to be examined by the Auditor General in accordance with any provision made by or by virtue of this or any other Act.
- (8) In this paragraph “relevant person” means—
- (a) in a case within paragraph (a) of sub-paragraph (1) relating to any accounts which the Welsh Ministers are directed to prepare under section 131, the

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

- Welsh Ministers, the Counsel General and any person to whose financial affairs and transactions the accounts are to relate by virtue of subsection (3) of that section,
- (b) in a case within that paragraph relating to any accounts which the Assembly Commission is directed to prepare under section 137, the Assembly Commission and any person to whose financial affairs and transactions the accounts are to relate by virtue of subsection (2) of that section,
 - (c) in a case within that paragraph relating to any other auditable accounts, the person by whom the accounts are prepared, and
 - (d) in any other case, a person to whom the study or examination relates.
- (9) No order may be made under sub-paragraph (2)(c) unless the Welsh Ministers have consulted—
- (a) the Treasury, and
 - (b) the Auditor General.
- (10) A statutory instrument containing an order under sub-paragraph (2)(c) is subject to annulment in pursuance of a resolution of the Assembly.

Other powers

- 18 (1) Where—
- (a) the Welsh Ministers are entitled to appoint the auditor of the accounts of any person (other than the Auditor General), and
 - (b) the Auditor General would not otherwise be eligible to be appointed as auditor of those accounts,
- the Welsh Ministers may appoint the Auditor General to be auditor of those accounts.
- (2) If in such a case the auditor is to be appointed annually, the Welsh Ministers may appoint the Auditor General—
- (a) for a year,
 - (b) for two or more years, or
 - (c) indefinitely until further exercise of the power of appointment.
- (3) The Auditor General may—
- (a) examine, certify or report on a person's accounts, or
 - (b) carry out examinations into the economy, efficiency and effectiveness with which a person has used resources in discharging the person's functions,
- if provision is made for the Auditor General to do so by an agreement entered into by the person with either the Welsh Ministers or a Minister of the Crown.
- (4) In determining how to exercise functions under paragraph (b) of sub-paragraph (3) the Auditor General must take into account the Audit Committee's views as to the examinations which the Auditor General should carry out under that paragraph.
- (5) If an Order in Council under section 58 transfers a function of preparing accounts to the Welsh Ministers, the Secretary of State may by order provide for the transfer to the Auditor General of any function of the Comptroller and Auditor General in relation to those accounts.
- (6) An order under sub-paragraph (5) may make such modifications of—

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

- (a) any enactment (including any enactment comprised in or made under this Act) or prerogative instrument, or
 - (b) any other instrument or document,
- as the Secretary of State considers appropriate in connection with the provision made by the order.
- (7) An Order in Council under section 58 may include any provision that may be included in an order under sub-paragraph (5).
 - (8) If the Treasury designate the Welsh Ministers in respect of a financial year for the purposes of section 10 of the Government Resources and Accounts Act 2000 (c. 20) (whole of government accounts), the Auditor General must carry out the audit required by subsection (2)(c) of that section.
 - (9) Where the Treasury make arrangements with the Welsh Ministers under subsection (8) of that section, the Auditor General must carry out the audit required by paragraph (c) of that subsection.
 - (10) No order under sub-paragraph (5) which contains provisions in the form of amendments or repeals of enactments contained in an Act is to be made unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, each House of Parliament.
 - (11) A statutory instrument containing an order under sub-paragraph (5) is (unless a draft of the statutory instrument has been approved by a resolution of each House of Parliament) subject to annulment in pursuance of a resolution of either House of Parliament.

Reports in public interest

- 19 (1) If the Auditor General thinks that it would be in the public interest to bring to the public's attention a matter coming to the Auditor General's notice in the course of an examination or study to which sub-paragraph (2) applies, the Auditor General may prepare a report on that matter.
- (2) This sub-paragraph applies to—
- (a) an examination of auditable accounts (other than accounts falling to be examined under paragraph 18(3)(a)), and
 - (b) an examination or study under section 135 or 140 of this Act, section 145 of the Government of Wales Act 1998 (c. 38) (examinations into use of resources by body specified in Schedule 17 to that Act) or section 145A of that Act (studies for improving economy etc. in services provided by relevant bodies), except one undertaken at the request of the body or bodies to which it relates.
- (3) The Auditor General must, as soon as practicable after preparing a report under sub-paragraph (1), lay the report before the Assembly.
- (4) In this paragraph “auditable accounts” has the same meaning as in paragraph 17.

Certification of claims, returns etc.

- 20 (1) The Auditor General must, if so required by a relevant body, make arrangements for—

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

- (a) certifying any claim or return in respect of a grant made or subsidy paid to that body by the Welsh Ministers, any Minister of the Crown or any public authority,
- (b) certifying any account submitted by that body to the Welsh Ministers, any Minister of the Crown or any public authority with a view to obtaining payment under a contract between that body and the Welsh Ministers, the Minister of the Crown or the public authority,
- (c) certifying that body's calculation under paragraph 5(6)(a) of Schedule 8 to the Local Government Finance Act 1988 (c. 41) of the amount of its non-domestic rating contribution for a financial year, and for certifying the amount calculated, or
- (d) certifying any return by that body which, by or under any enactment, is required or authorised to be certified by the body's auditor or under arrangements made by the Auditor General.

(2) In this paragraph—

“public authority” means a body established by or under the Community Treaties or any enactment, and

“relevant body” means at any time—

- (a) a body whose accounts, or statements of accounts, are auditable accounts within the meaning of paragraph 17(7), or
- (b) a body which at that time is a local government body in Wales (within the meaning given in section 12(1) of the Public Audit (Wales) Act 2004 (c. 23)).

Ancillary powers

- 21 (1) Arrangements may be made between the Auditor General and a relevant authority—
- (a) for any function of the authority to be exercised by, or by a member of the staff of, the Auditor General, or
 - (b) for administrative, professional or technical services to be provided by the Auditor General to the authority or by the authority to the Auditor General.
- (2) Any arrangements under sub-paragraph (1)(a) for the exercise of any function of a relevant authority do not affect the responsibility of the relevant authority on whose behalf the function is exercised.
- (3) If the condition in sub-paragraph (4) is met, the Auditor General and—
- (a) a relevant authority,
 - (b) a qualified auditor, or
 - (c) an accountancy body,
- may make arrangements to co-operate with, and give assistance to, each other.
- (4) The condition is that—
- (a) the Auditor General considers that to do so would facilitate, or be conducive to, the exercise of the Auditor General's functions, and
 - (b) the relevant authority, qualified auditor or accountancy body in question considers that to do so would facilitate, or be conducive to, the exercise of the functions of that authority, person or body.
- (5) The Auditor General may make arrangements under this paragraph on such terms and conditions, including conditions as to payment, as the Auditor General thinks fit.

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

(6) In this paragraph—

“accountancy body” means—

- (a) a body which is a recognised supervisory body for the purposes of Part 2 of the Companies Act 1989 (c. 40), or
- (b) an approved European body of accountants,

“approved European body of accountants” means a body of accountants which—

- (a) is established in the United Kingdom or another state which is either a member State or a non-member EEA State, and
- (b) is for the time being approved by the Welsh Ministers by order,

“non-member 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) but which is not a member State,

“qualified auditor” means a person eligible to be appointed as an auditor under section 14 of the Public Audit (Wales) Act 2004 (c. 23) (auditor appointed in respect of local government bodies in Wales), and

“relevant authority” means any Minister of the Crown or government department, any public authority (including any local authority) or the holder of any public office.

(7) A statutory instrument containing an order under sub-paragraph (6) is subject to annulment in pursuance of a resolution of the Assembly.