

These notes refer to the Local Government and Public Involvement in Health Act 2007 (c.28) which received Royal Assent on 30 October 2007

LOCAL GOVERNMENT AND PUBLIC INVOLVEMENT IN HEALTH ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 8: Local Services: Inspection and Audit

Introduction

382. **Part 8** of the Act makes provision about the inspection and audit of local services. In particular, sections 147 and 148 of and Schedule 10 to the Act provide for the merger of the inspection functions of the Benefit Fraud Inspectorate (in relation to English local authorities) with the Audit Commission. The intention is that this will avoid duplication of effort and reduce inspection burdens on local authorities.
383. **Sections 149** and **150** and Schedule 11 make provision about the interaction between the Audit Commission and other authorities. Sections 153 to 158 and 165 amend the Commission's powers to produce and publish studies and reports. Sections 159 to 163 update and amend several of the Commission's powers relating to audit. Section 164 relaxes the restrictions on disclosure of information obtained by the auditor or the Audit Commission.
384. **Sections 166** and **167** make provision about the Auditor General for Wales and auditors.

Chapter 1: Constitution of the Audit Commission

Section 145: Membership

385. This section reduces the number of members of the Audit Commission. At present the Commission must comprise 15 to 20 members. The Act reduces this requirement to 10 to 15 members.

Section 146: Change of name

386. This section removes the reference to Wales in the Audit Commission's official legal title. As of 1st April 2005 the Audit Commission ceased to operate in Wales, with the exception of a very limited residual power relating to its national studies function. Its core functions in Wales are now carried out by the Auditor General for Wales.

Chapter 2: Audit Commission and Auditors: Functions and Procedure

Benefits inspections

Section 147: Powers of the Audit Commission relating to benefits

387. This section relates to the inspection of the administration of housing and council tax benefit by local authorities in England, which will be taken over by the Audit Commission, following its merger with the Benefit Fraud Inspectorate.

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388. This section amends the Local Government Act 1999 to provide that if, following a best value inspection, the Audit Commission has concerns about the administration of housing and council tax benefit by a local authority it is required to send a report on its findings to the Secretary of State, who can then take action if appropriate.

Section 148: Benefits Fraud Inspectorate: transfers to Audit Commission

389. This section enables the Secretary of State to make transfer schemes transferring to the Audit Commission property, rights and liabilities relating to the inspection of the administration of housing benefit and council tax benefit by the Benefits Fraud Inspectorate.
390. A transfer scheme under this section may only transfer employees if the employee and the Audit Commission consent to the transfer. Schedule 10 to the Act makes further provision about transfer schemes.

Interaction with other authorities

Section 149: Interaction of the Audit Commission with other authorities

391. This section introduces Schedule 11 to the Act, which inserts a new Schedule 2A in the Audit Commission Act 1998, which makes provision about the functions of the Audit Commission in relation to inspections and about the Audit Commission's interaction with other inspection authorities, public bodies and others.
392. The new Schedule 2A includes provision enabling the Audit Commission to provide advice and assistance to public authorities whether within or outside the UK (see paragraph 9 of the new Schedule). It replaces the existing provision in section 37 of the Audit Commission Act 1998 (power to provide advice and assistance to certain inspection authorities).

Section 150: Interaction of benefits inspectors with the Audit Commission

393. This section relates to persons who are authorised by the Secretary of State under section 139A of the Social Security Administration Act 1992 to carry out inspections of the administration of housing benefit and council tax benefit. The Secretary of State is not expected to use the power to authorise such people often once the Audit Commission takes on the bulk of such inspections.
394. This section requires such persons to produce documents setting out what inspections they expect to carry out and how they expect to carry them out, after consultation with the Audit Commission. It requires them to send copies of the final documents to the Audit Commission and the Secretary of State. It requires such persons to co-operate with the Audit Commission. It also enables them to act jointly with the Audit Commission. These new powers and duties reflect the new powers and duties of the Audit Commission in new Schedule 2A to the Audit Commission Act 1998 inserted by Schedule 11 to the Act.

Inspections and audit

Section 151: Powers of auditors and inspectors to obtain information

395. This section clarifies the powers of auditors and the Audit Commission to obtain access to documents and information, under section 6 of the Audit Commission Act 1998 (financial audit) and section 11 of the Local Government Act 1999 (best value inspections). In particular, it enables them to inspect computers on which documents are held.

Section 152: Inspections of best value authorities

396. This section clarifies the Audit Commission's existing power to inspect best value authorities' compliance with their duties under Part 1 of the Local Government Act 1999 (best value). It enables the Audit Commission to carry out general inspections of the performance of best value authorities.

Studies and reports etc

Section 153: National studies

397. **Section 153** adds to the list of bodies that the Audit Commission must consult on its proposals for national studies under sections 33 and 34 of the Audit Commission Act 1998. The amendment requires the Audit Commission to consult the Secretary of State to ensure relevant Government Departments are consulted on proposed national studies. The Audit Commission retains a limited residual power in Wales in relation to national studies. The amendments also provides that where a proposed study relates to a body in respect of which the Welsh Ministers may exercise functions, the Audit Commission must also consult Welsh Ministers

Section 154: Studies at request of particular bodies

398. Sections 35 and 35A of the Audit Commission Act 1998, which allowed the Audit Commission to carry out and charge for consultancy studies at the request of audited bodies, are repealed by this section. Those powers are replaced by the Audit Commission's new power to provide advice and assistance to public authorities (see paragraph 9 of new Schedule 2A to the Audit Commission Act 1998 inserted by Schedule 11 to the Act).

Section 155: Registered Social Landlords

399. **Section 155** confers on the Audit Commission power to provide advice and assistance to all registered social landlords in England, without needing to consider whether they are public authorities.

Section 156: Information about performance standards of local authorities etc

400. **Section 156** of this Act repeals sections 44 to 47 of the Audit Commission Act 1998. Those sections gave the Audit Commission power to require local authorities to publish information about their performance.

Section 157: Reports on English local authorities

401. This section inserts a new section 47A in the Audit Commission Act 1998. It enables the Audit Commission to produce three types of reports on English local authorities: (a) reports on the risk that authorities may fail to perform their functions; (b) reports on the rate at which authorities' performance is improving; (c) reports on authorities' use of resources.
402. This section includes a power to report on all English local authorities, individual authorities or groupings of authorities. By virtue of *subsection (3)* the report can apply to a specific function or functions. English local authorities are defined in *subsection (5)*. This section does not confer any new information-gathering powers on the Audit Commission.
403. The Secretary of State may by order amend the list of bodies which are subject to the reporting power in this section by removing a body from the list or by adding a body which is a best value authority. The Secretary of State may not add to the list a body which is a Welsh best value authority or a police authority for a police area in Wales.

Section 158: Reports categorising English local authorities

404. **Section 158** amends the requirement in section 99 of the Local Government Act 2003 for the Audit Commission to produce reports on its findings on local authorities' performance in exercising their functions which categorise the authorities. This section provides that the Audit Commission will only need to produce a report if directed by the Secretary of State.

Miscellaneous

Section 159: Appointment of auditors

405. This section amends section 3(6) of the Audit Commission Act 1998 which disbars a firm from being appointed as an auditor by the Audit Commission unless each of its members is a member of one or more of the qualifying professional accountancy bodies. The provision is amended so that the Audit Commission may appoint a firm provided that those persons carrying out or supervising the audit belongs to one of the qualifying bodies.

Section 160: Inspection and disclosure of personal information

406. Under section 15 of the Audit Commission Act 1998 an interested person can inspect the accounts to be audited and all books, deeds, contracts, Acts, vouchers and receipts relating to them. These rights are wide enough to allow access to the personal information of service users which would otherwise be covered by data protection legislation. This section amends section 15 to provide that personal information is not disclosed if the auditor considers appropriate.

Section 161: Right to make objections at audit

407. This section amends section 16 of the Audit Commission Act 1998 (which gives local government electors the right to attend in person before the auditor to make objections) so that all objections are to be made in writing.

Section 162: Appointment of auditor to carry out agreed audits

408. This section amends section 29 of the Audit Commission Act 1998 (which provides that the Audit Commission can undertake the audit of any body connected with local government or the National Health Service, subject to the consent of the Secretary of State and the agreement of the body concerned) to clarify the fact that the Audit Commission is entitled to appoint auditors to undertake audits under section 29, as well as doing so itself.

Section 163: Consent for the purposes of agreed audit

409. The aforementioned section 29 of the Audit Commission Act 1998 is further amended to allow the Secretary of State to give consent to a class of body to be audited e.g. where there are a large number of bodies of the same type.

Section 164: Disclosure of information obtained by the Audit Commission or an auditor

410. This section amends the restrictions on the disclosure of information obtained by an auditor or the Audit Commission in the exercise of functions under the Audit Commission Act 1998 or Part 1 of the Local Government Act 1999.
411. The amended provision enables-
- a) a public authority (within the meaning of the Freedom of Information Act 2000) to disclose information except where the disclosure would prejudice the effective performance of that authority's functions;

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- b) an auditor to disclose information except where the disclosure would prejudice the effective performance of his functions;
- c) any other person to disclose information with the consent of the Audit Commission or an auditor, such consent to be given unless the disclosure would prejudice the effective performance of the functions of an auditor or the Audit Commission.

Section 165: Publication of information by the Audit Commission

412. This section allows the Audit Commission to publish any information provided the publication will not prejudice the effective performance of its functions or those of an auditor.

Chapter 3: Auditor General for Wales and Auditors

Section 166: Registered social landlords in Wales

413. **Section 166** confers on the Auditor General for Wales power to provide advice and assistance to all registered social landlords in Wales, without needing to consider whether they are public authorities.

Section 167: Disclosure of information obtained by the Auditor General for Wales or an auditor

414. This section makes provision for the Auditor General for Wales and an auditor under the Public Audit (Wales) Act 2004 equivalent to provision made by section 164 for the Audit Commission and an auditor under the Audit Commission Act 1998.