

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

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## **EXPLANATORY NOTES**

### **TERRITORIAL EXTENT AND DEVOLUTION**

#### **Part 2, Chapter 4: General**

##### ***Section 51: Social security references and reports to Secretary of State***

105. This section empowers the Auditor General to refer to the Secretary of State (in practice, the Secretary of State for Work and Pensions) matters arising from work undertaken under Part 2 of the Act if he considers it relevant to the Secretary of State's functions in respect of social security. An auditor appointed by the Auditor General is given a similar power.

##### ***Sections 52 & 53: Rights of Auditor General for Wales to documents and information***

106. These provisions are distinct from those in section 18, which deals with an appointed auditor's right of access to documents and information etc. However, they mirror those rights.
107. Under section 52, the Auditor General has the right of access at all reasonable times to every document relating to a local government body in Wales which he considers necessary for the exercise of his functions under Part 2 of the Act. By virtue of section 14(3), his functions do not extend to the direct audit of the accounts of a local government body in Wales.
108. Subsection (2) makes it clear that the power of access to documents enables the Auditor General to have access to documents in a financial chain relating to the use of public money, in the same way as appointed auditors (see the notes on section 18, above) - documents held or controlled by anyone who has received financial assistance from a local government body in Wales, or who has supplied goods or services to the body under a contract, or who has been a sub-contractor in relation to such a contract. The aim of this provision is to ensure that regularity, propriety and the principles of value for money apply to the use of public money at each stage in the chain of expenditure.
109. **Section 52** is consistent with section 95 of the GOWA (as substituted) in this respect (see the note on section 11, above), and also with section 18, which deals with the rights of appointed auditors to documents and information etc. when auditing the accounts of local government bodies in Wales. The Act, thus, seeks to ensure a single standard of access to documents and information etc. in public sector audit in Wales, consistent with the recommendations made by Lord Sharman of Redlynch in his report "Holding to Account - the Review of Audit and Accountability for Central Government (February 2001)".
110. By virtue of section 52(2)(c), the Assembly has a power to extend the categories of documents for the purposes of this section. It may by order specify any other description of documents to which the appointed auditor's right of access will apply. Before making such an order, the Assembly must consult the Auditor General and such associations of

local authorities in Wales as appear to be concerned. The Assembly may use this power in order to extend the description of documents etc. that the Auditor General may access in order to trace the use of public funds. For example, if the Auditor General is carrying out a value for money exercise in relation to one or more local government bodies in Wales, the Auditor General may need to have access to documents relating to the use of funds by organisations in receipt of significant grant funding. If an organisation had contracted with contractor A who in turn had sub-contracted with contractor B, the Assembly could make an order to ensure that the Auditor General could have access, if necessary, to relevant documents held by contractor B.

111. In addition to his right of access to documents, the Auditor General has a right to any assistance, information and explanation he thinks necessary for the purposes of carrying out his functions under Part 2. By virtue of subsections (4) and (5) of section 52, he can require such assistance, information and explanation from anyone he thinks has information about:

- a local government body in Wales;
- a document to which the Auditor General has a right of access; or
- a person who holds or controls such a document.

The Auditor General can require such a person to attend before him in person to give the assistance, information or explanation, or to produce a document to which he has a right of access.

112. This right to information is intended to assist the Auditor General to ascertain the facts where, for instance, a document which he is entitled to see cannot be located. It is consistent with provisions in section 95 of the GOWA (as substituted by section 11) and section 18.

113. The Auditor General, like appointed auditors, is also entitled to every facility he may reasonably need in order to carry out his functions under Part 2 (e.g. adequate accommodation, lighting, heating, access to relevant computer hardware and software etc.), and any other information he may need to enable him to do his work.

114. The main functions of the Auditor General to which these rights of access apply are: appointing auditors under section 14; undertaking economy, efficiency, effectiveness and other studies under sections 41, 42, 44 and 45; ordering an extraordinary audit under section 37; and issuing directions under section 47. The rights also apply to the Auditor General's functions under Chapter 3 (Best Value).

115. [Section 52\(6\)](#) also gives the Auditor General rights to inspect specific documents for the purpose of ensuring that auditors appointed by him are maintaining proper standards when auditing the accounts of local government bodies in Wales.

116. [Section 53](#) specifies that a person who fails to comply, without reasonable excuse, with any of the Auditor General's requirements under section 52(4) is guilty of an offence, specifies the penalty applicable, and provides for the recovery of any expenses incurred by the Auditor General in connection with a successful prosecution under the section.

#### ***Section 54: Restriction on disclosure of information***

117. This section places restrictions on the disclosure of certain information relating to a particular body or person. The restrictions apply where information is acquired by the Auditor General, an appointed auditor (or by a person acting on behalf of the Auditor General or an appointed auditor) in the course of exercising their functions under:

- Part 2 of the Act
- Part 1 of the Local Government Act 1999 (functions in relation to the best value regime)

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

- The new section 145C of GOWA (inserted by section 5 of the Act), dealing with studies relating to registered social landlords in Wales.

The information must not be disclosed unless in accordance with the exceptions listed in section 54(2). One of the exceptions is that the disclosure is made for the purposes of any functions of the Auditor General for Wales, or of an auditor, under Part 2 of the Act or Part 1 of the Local Government Act 1999. Thus section 54 does not obstruct the Auditor General or an auditor from putting into the public domain any information which should be put there for the proper exercise of that person's functions.

118. Disclosing the information in contravention of section 54(2) constitutes an offence under section 54(3).
119. **Section 54** mirrors the provisions of section 49 of the ACA. At the time of the passage of the Act, section 49 of the ACA was under review by the Department of Constitutional Affairs with a view to its amendment or repeal by order under section 75 of the Freedom of Information Act 2000. This is because section 49 is a provision capable of preventing the disclosure of information under section 1 of the Freedom of Information Act. In order to ensure that section 54 remains consistent with section 49, section 54(6) gives the Secretary of State (in practice, the Secretary of State for Wales) an order-making power to amend or repeal section 54 in such a way as to reflect amendments to or repeal of section 49 of the ACA. The order-making power cannot be used so as to make section 54 more restrictive of the disclosure of information than it currently is. Any order made under section 54(6) would be subject to approval by both Houses of Parliament, in the same way as an order under section 75 of the Freedom of Information Act, amending or repealing section 49 of the ACA, would be.

***Section 55: Supply of benefit information to Auditor General for Wales***

120. This section enables the Secretary of State (in practice, the Secretary of State for Work and Pensions) to supply the Auditor General with information in respect of housing benefit and council tax benefit that he considers relevant to the Auditor General's functions.

***Section 56: Publication of information by Auditor General for Wales***

121. This section gives the Auditor General power to publish particular information relating to audits carried out under Part 2 of the Act. Other powers of, or duties on, the Auditor General to publish are contained in various provisions of the Part, e.g. in relation to studies under section 41. The information covered by section 56 is information relating to:
  - public interest reports made by appointed auditors under section 22 and the consequences of such reports,
  - contraventions by local government bodies in Wales of audit regulations made by the Assembly under section 39, and
  - contraventions by local government bodies in Wales of directions from the Auditor General under section 47 requiring the publication of information about standards of performance.
122. In relation to public interest reports by appointed auditors, the Auditor General must not publish details of any decision made at a meeting of the body in question while the public were excluded from that meeting on certain grounds. The grounds are that confidential information (within the meaning of s. 100A(3) of the Local Government Act 1972), exempt information (within the meaning of section 100I of that Act) or information which it would be prejudicial to the public interest to disclose, was to be discussed in order to reach the decision.

123. The Auditor General must inform a body before publishing information concerning it. He must publish the information in a way that he considers appropriate for bringing it to the attention of those who may be interested in it.

***Section 57: Provision of information to Audit Commission***

124. This section requires the Auditor General to provide the Audit Commission, if it so requests, with information to enable it to make comparisons between local government bodies in Wales (as defined in sections 12 and 59(5)) and other local government bodies in respect of which the Audit Commission has functions. The duty on the Auditor General applies only when the Commission is requesting such information for the purposes of its functions under sections 33 and 34 of the ACA (to undertake or promote studies for improving economy etc in services and studies on the impact of statutory provisions, etc). The purpose of the section is to facilitate cross-border comparisons between bodies and sectors, with the aim of raising standards in both England and Wales. The equivalent duty is placed on the Audit Commission to supply information to the Auditor General by Schedule 2, amending the ACA. These duties are complementary to other duties and powers of co-operation applicable to the Auditor General and the Audit Commission elsewhere in the Act, particularly in section 43 and in other provisions of Schedule 2.
125. The Auditor General can of course supply other information to the Commission, where to do so is within his powers.

***Section 58: Orders and regulations***

126. This section sets out the procedures for making orders and regulations, by the Assembly or the Secretary of State, under Part 2 of the Act.

***Section 59: Interpretation of Part 2***

127. This section sets out the interpretation of certain terms for the purposes of Part 2.