



# Local Government and Public Involvement in Health Act 2007

## 2007 CHAPTER 28

### PART 8

#### LOCAL SERVICES: INSPECTION AND AUDIT

VALID FROM 01/04/2008

#### CHAPTER 1

##### CONSTITUTION OF THE AUDIT COMMISSION

VALID FROM 01/08/2009

#### **145 Membership**

In section 1(2) of the Audit Commission Act 1998 (c. 18) (number of members of Commission)—

- (a) for “15” substitute “ 10 ”, and
- (b) for “20” substitute “ 15 ”.

#### **146 Change of name**

- (1) The body which, immediately before the commencement of this section, was known as the Audit Commission for Local Authorities and the National Health Service in England and Wales is to be known as the Audit Commission for Local Authorities and the National Health Service in England.

**Status:** Point in time view as at 13/02/2008. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Local Government and Public Involvement in Health Act 2007, Part 8. (See end of Document for details)

- (2) Accordingly, in section 1(1) of the Audit Commission Act 1998 (c. 18) (which continues the existence of the Audit Commission for Local Authorities and the National Health Service in England and Wales), omit “and Wales”.
- (3) Schedule 9 (further amendments consequential on subsection (1)) has effect.
- (4) References in any enactment (other than this section) or in subordinate legislation to—
- (a) the Audit Commission for Local Authorities and the National Health Service in England and Wales, or
  - (b) the Audit Commission for Local Authorities in England and Wales,
- are, unless the contrary intention appears, to be read as references to the Audit Commission for Local Authorities and the National Health Service in England.

## CHAPTER 2

### AUDIT COMMISSION AND AUDITORS: FUNCTIONS AND PROCEDURE

VALID FROM 31/03/2008

#### *Benefits inspections*

VALID FROM 01/04/2008

#### **147 Powers of the Audit Commission relating to benefits**

- (1) In section 13 of the Local Government Act 1999 (c. 27) (reports by Audit Commission relating to best value authorities), after subsection (4) insert—
- “(4A) If a report relates to any extent to the administration of housing benefit or council tax benefit and the Commission thinks fit to do so, it shall as soon as reasonably practicable send a copy of the report to the Secretary of State.”
- (2) In section 139D of the Social Security Administration Act 1992 (c. 5) (power of Secretary of State to give directions following report), in subsection (1), after paragraph (ba) insert—
- “(bb) a copy of a report has been sent to a local authority under subsection (3) of section 13 of the Local Government Act 1999 and to the Secretary of State under subsection (4A) of that section;”.

#### **148 Benefit Fraud Inspectorate: transfers to the Audit Commission**

- (1) The Secretary of State may make a scheme for the transfer to the Audit Commission of property, rights and liabilities of—
- (a) the Secretary of State;

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- (b) a person authorised under section 139A of the Social Security Administration Act 1992 (reports on administration of housing benefit and council tax benefit).
- (2) The Secretary of State may only exercise the power under subsection (1) to the extent that he considers it appropriate having regard to the functions of the Audit Commission relating to the administration of housing benefit and council tax benefit in England.
- (3) Before making a scheme under this section, the Secretary of State must consult the Audit Commission.
- (4) A transfer scheme may make provision for rights and liabilities relating to an individual's contract of employment to be transferred, but only if—
- immediately before the date on which the scheme takes effect, the individual is employed in the civil service of the State in the part of the Department for Work and Pensions known as the Benefit Fraud Inspectorate; and
  - the individual and the Audit Commission have consented to the provision.
- (5) Schedule 10 (further provision about transfer schemes) has effect.
- (6) For the purposes of this section and Schedule 10, where an individual is employed in the civil service of the State on terms which do not constitute a contract of employment—
- the individual shall be treated as if he were employed under a contract of employment; and
  - the terms of his service shall be treated as if they were the terms of the contract.
- (7) In this section and in Schedule 10—
- “the Audit Commission” means the Audit Commission for Local Authorities and the National Health Service in England;
- “transfer scheme” means a transfer scheme under subsection (1).

#### *Interaction with other authorities*

#### **149 Interaction of the Audit Commission with other authorities**

- The Audit Commission Act 1998 (c. 18) is amended as follows.
- Omit section 37 (assistance to inspection authorities).
- In Part 4, before the italic heading preceding section 48 insert—

#### *“Interaction with other authorities*

#### **47B Interaction with other authorities**

Schedule 2A (interaction with other authorities) has effect.”

- After Schedule 2 to that Act, insert the Schedule 2A (interaction with other authorities) set out at Schedule 11.

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### Commencement Information

**II** S. 149 in force at 31.1.2008 by S.I. 2008/172, art. 2(1)(a)

VALID FROM 01/04/2008

## 150 Interaction of benefits inspectors with the Audit Commission

After section 139B of the Social Security Administration Act 1992 (c. 5) insert—

### “139BA Interaction with Audit Commission

- (1) A person authorised under section 139A(1) must from time to time, or at such times as the Secretary of State may specify by order, prepare—
  - (a) a document setting out what inspections of English authorities he proposes to carry out (an “inspection programme”);
  - (b) a document setting out the way in which he proposes to carry out his functions of inspecting and reporting on such authorities (an “inspection framework”).
- (2) The person authorised under section 139A(1) must—
  - (a) consult the Audit Commission before preparing an inspection programme or an inspection framework; and
  - (b) once an inspection programme or inspection framework is prepared, send a copy of it to—
    - (i) the Secretary of State; and
    - (ii) the Audit Commission.
- (3) The Secretary of State may by order specify the form that inspection programmes or inspection frameworks must take.
- (4) A person authorised under section 139A(1)—
  - (a) must co-operate with the Audit Commission, and
  - (b) may act jointly with the Audit Commission,
 where it is appropriate to do so for the efficient and effective discharge of the person's functions in relation to English authorities.
- (5) In this section—
 

“the Audit Commission” means the Audit Commission for Local Authorities and the National Health Service in England;

“English authorities” means authorities administering housing benefit or council tax benefit in England;

“person” does not include the Audit Commission.”

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### *Inspections and audit*

#### **151 Powers of auditors and inspectors to obtain information**

- (1) In section 6 of the Audit Commission Act 1998 (c. 18) (auditors' right to documents and information)—
- (a) after subsection (1) insert—

“(1A) The right conferred by subsection (1) includes power to inspect, copy or take away the document.”;
  - (b) after subsection (4) insert—

“(4A) In relation to a document kept in electronic form, the power in subsection (2)(b) to require a person to produce a document includes power to require it to be produced in a form in which it is legible and can be taken away.

(4B) In connection with inspecting such a document, an auditor—

    - (a) may obtain access to, and inspect and check the operation of, any computer and associated apparatus or material which he considers is or has been used in connection with the document;
    - (b) may require a person within subsection (4C) to afford him such reasonable assistance as he may require for that purpose.

(4C) A person is within this subsection if he is—

    - (a) the person by whom or on whose behalf the computer is or has been used; or
    - (b) a person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material.”;
    - (c) in subsection (5), for “(4)” substitute “(4C) ”;
    - (d) in subsection (6)—
      - (i) after “reasonable excuse” insert “ obstructs the exercise of any power conferred by this section or ”;
      - (ii) for “subsection (1), (2) or (4)” substitute “ this section ”.

(2) In section 11 of the Local Government Act 1999 (c. 27) (inspectors' powers and duties in connection with best value inspections)—

    - (a) after subsection (1) insert—

“(1A) The right conferred by subsection (1)(b) includes power to inspect, copy or take away the document.”;
    - (b) after subsection (2) insert—

“(2A) In relation to a document kept in electronic form, the power in subsection (2)(b) to require a person to produce a document includes power to require it to be produced in a form in which it is legible and can be taken away.

(2B) In connection with inspecting such a document, an inspector—

      - (a) may obtain access to, and inspect and check the operation of, any computer and associated apparatus or material which

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he considers is or has been used in connection with the document;

- (b) may require a person within subsection (2C) to afford him such reasonable assistance as he may require for that purpose.

(2C) A person is within this subsection if he is—

- (a) the person by whom or on whose behalf the computer is or has been used; or
- (b) a person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material.”;
- (c) in subsection (5), after “reasonable excuse” insert “ obstructs the exercise of any power conferred by this section or ”.

#### Commencement Information

**I2** S. 151 in force at 31.1.2008 by S.I. 2008/172, art. 2(1)(b)

VALID FROM 01/04/2008

### 152 Inspections of best value authorities

- (1) Section 10 of the Local Government Act 1999 (inspections) is amended as follows.
- (2) Before subsection (1) insert—
- “(A1) The Audit Commission may carry out an inspection of a best value authority’s performance of its functions or of any particular function or functions.”
- (3) In subsection (1), after “may” insert “ , in particular, ”.

#### *Studies and reports etc*

### 153 National studies

- (1) Part 3 of the Audit Commission Act 1998 (c. 18) (studies, performance standards and other functions) is amended as follows.
- (2) In section 33(6) (studies for improving economy etc in services)—
- (a) before paragraph (a) insert—
- “(za) consult the Secretary of State;”;
- (b) in paragraph (c), omit “the Secretary of State,”;
- (c) in paragraph (ca), after “consult” insert “ the Welsh Ministers and ”;
- (d) after paragraph (e) insert “; and
- (f) in the case of any other study relating to a body in respect of which the Welsh Ministers may exercise functions, consult the Welsh Ministers.”
- (3) In section 34(6) (reports on impact of statutory provisions etc)—
- (a) for paragraph (b) substitute—

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- “(b) the Secretary of State;”;  
 (b) in paragraph (da), after “consult” insert “ the Welsh Ministers and ”.

#### Commencement Information

**I3** S. 153 in force at 31.1.2008 by S.I. 2008/172, art. 2(1)(c)

### 154 Studies at request of particular bodies

In the Audit Commission Act 1998, omit—

- (a) section 35 (studies at request of bodies subject to audit);
- (b) section 35A (studies for functional bodies at request of Greater London Authority).

#### Commencement Information

**I4** S. 154 in force at 31.1.2008 by S.I. 2008/172, art. 2(1)(d)

### 155 Registered social landlords

- (1) In section 40(1) of the Audit Commission Act 1998 (studies relating to registered social landlords), omit “(other than registered social landlords in Wales)”.
- (2) In section 41A of that Act (inspections of registered social landlords), omit subsection (1A) (registered social landlords in Wales).
- (3) After section 41B of that Act insert—

#### “41C Advice and assistance for registered social landlords

- (1) The Commission may, if it thinks it appropriate to do so, provide advice or assistance to a registered social landlord for the purpose of the exercise by the registered social landlord of its functions.
- (2) Advice or assistance under this section may be provided on such terms, including terms as to payment, as the Commission thinks fit.”
- (4) Omit section 42 of that Act (consultancy services relating to audit of accounts of registered social landlords).
- (5) For section 43 of that Act substitute—

#### “43 Meaning of “registered social landlord”

In sections 40 to 41C, “registered social landlord” means a body registered as a social landlord under Part 1 of the Housing Act 1996, other than a body mentioned in any of paragraphs (a) to (c) of section 56(2) of that Act (bodies registered in Wales).”

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### Commencement Information

**I5** S. 155 in force at 31.1.2008 by S.I. 2008/172, art. 2(1)(e)

VALID FROM 01/04/2008

### 156 Information about performance standards of local authorities etc

In the Audit Commission Act 1998 (c. 18), omit sections 44 to 47 (publication of information about standards of performance).

VALID FROM 01/04/2008

### 157 Reports on English local authorities

(1) In Part 3 of the Audit Commission Act 1998, after section 47 insert—

*“Reports on performance*

#### **“47A Reports relating to performance of English local authorities**

- (1) The Commission may produce comparative and other reports in relation to one or more of the following aspects of the performance of English local authorities in exercising their functions—
  - (a) the risk that authorities may fail to perform their functions or fail to perform their functions adequately;
  - (b) the rate at which authorities' performance is improving;
  - (c) the economy, efficiency and effectiveness of authorities' use of resources.
- (2) A report under subsection (1) may relate to—
  - (a) all English local authorities;
  - (b) any particular English local authority or authorities; or
  - (c) particular descriptions of English local authority.
- (3) A report under subsection (1) may relate to particular functions of authorities.
- (4) In this section, “English local authority” means—
  - (a) a county council in England;
  - (b) a district council;
  - (c) a London borough council;
  - (d) the Council of the Isles of Scilly;
  - (e) the Common Council of the City of London in its capacity as a local authority;
  - (f) a metropolitan fire and civil defence authority;
  - (g) the London Fire and Emergency Planning Authority; or



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- (h) a fire and rescue authority constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004 or a scheme to which section 4 of that Act applies.
- (5) The Secretary of State may by order amend the definition of “English local authority” in subsection (4) by adding any authority or body which is a best value authority, other than—
- (a) an authority or body which is a Welsh best value authority for the purposes of Part 1 of the Local Government Act 1999;
  - (b) a police authority for a police area in Wales.
- (6) The Secretary of State may by order remove from that definition any authority or body for the time being mentioned in it.
- (7) The powers in subsections (5) and (6) may be exercised to add or remove an authority or body to the extent that it acts in a capacity, or exercises functions, specified in the order.
- (8) Before making an order under subsection (5) or (6) the Secretary of State must consult the best value authorities concerned or persons appearing to him to represent the best value authorities concerned.”
- (2) In section 48 of that Act (provision of information etc to the Commission), in subsection (2) (functions in relation to which powers to obtain information etc do not apply), at the end insert “ or 47A ”.

VALID FROM 01/08/2009

## 158 Reports categorising English local authorities

- (1) Section 99 of the Local Government Act 2003 (c. 26) (categorisation of English local authorities by reference to performance) is amended as follows.
- (2) In subsection (1)—
- (a) for “from time to time” substitute “, if the Secretary of State so directs, ”;
  - (b) after “English local authorities” insert “, or of English local authorities of a description specified in the direction, ”.
- (3) After subsection (2) insert—
- “(2A) A direction by the Secretary of State under subsection (1) may specify—
- (a) the period or periods of performance to be covered by the report;
  - (b) the form of the report;
  - (c) the time by which the report must be produced.
- (2B) The power to give a direction under subsection (1) includes power to give a direction varying or revoking a previous direction given in exercise of that power.
- (2C) The Secretary of State must consult the Audit Commission before giving a direction under subsection (1).”

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### Miscellaneous

VALID FROM 01/04/2008

#### 159 Appointment of auditors

In section 3(6) of the Audit Commission Act 1998 (c. 18) (appointment of firm as auditor) for “each of its members” substitute “ the appointment provides that the audit may be conducted only by a member or employee of the firm who ”.

VALID FROM 01/04/2008

#### 160 Inspection and disclosure of personal information

- (1) Section 15 of the Audit Commission Act 1998 (inspection of documents and questions at audit) is amended as follows.
- (2) In subsection (3) for “about a member of the staff of the body whose accounts are being audited” substitute “ within the meaning of subsection (3A) or (4) ”.
- (3) After subsection (3) insert—
  - “(3A) Information is personal information if—
    - (a) it identifies a particular individual or enables a particular individual to be identified; and
    - (b) the auditor considers that it should not be inspected or disclosed.”
- (4) In subsection (4), for the words from the beginning to “if it” substitute “ Information is personal information if it is information about a member of the staff of the body whose accounts are being audited which ”.

VALID FROM 01/04/2008

#### 161 Right to make objections at audit

- (1) Section 16 of the Audit Commission Act 1998 (right to make objections at audit) is amended as follows.
- (2) In subsection (1), for the words from “, or any representative” to “objections” substitute “ may make objections to the auditor ”.
- (3) For subsections (2) and (3) substitute—
  - “(2) An objection under subsection (1) must be sent to the auditor in writing.
  - (3) At the same time as the objection is sent to the auditor, a copy of the objection must be sent to the body whose accounts are being audited.”

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- (4) Nothing in this section affects section 16 of the Audit Commission Act 1998 in so far as it relates to accounts prepared for a period beginning before the commencement of this section.

VALID FROM 01/04/2008

### **162 Appointment of auditor to carry out agreed audits**

- (1) Section 29 of the Audit Commission Act 1998 (agreed audit of accounts) is amended as follows.
- (2) In subsection (1), for “undertake the audit of” substitute “appoint an auditor to audit”.
- (3) After subsection (1) insert—
- “(1A) An auditor appointed under subsection (1) may be—
- (a) an officer of the Commission,
  - (b) an individual who is not an officer of the Commission, or
  - (c) a firm of individuals who are not officers of the Commission.”
- (4) In subsection (2), after “the Commission” insert “, the auditor”.

VALID FROM 01/04/2008

### **163 Consent for the purposes of agreed audit**

In section 29 of the Audit Commission Act 1998 (c. 18) (agreed audit of accounts), after subsection (4) insert—

- “(5) Consent for the purposes of subsection (1) may be given in respect of any particular body or description of body.
- (6) If the Secretary of State thinks fit he may notify any person of, or publish in any manner—
- (a) a consent that he has given for the purposes of subsection (1);
  - (b) any matter related to the consent.”

### **164 Disclosure of information obtained by the Audit Commission or an auditor**

- (1) The Audit Commission Act 1998 is amended as follows.
- (2) In section 49 of that Act (restriction on disclosure of information) omit subsection (1A).
- (3) After subsection (2) of that section insert—
- “(2A) A person who is, or acts on behalf of a person who is, a public authority for the purposes of the Freedom of Information Act 2000, may also disclose such information—

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- (a) in accordance with section 41(4); or
  - (b) in any other circumstances, except where the disclosure would, or would be likely to, prejudice the effective performance of a function imposed or conferred on the person by or under an enactment.
- (2B) An auditor who does not fall within subsection (2A), or a person acting on his behalf, may also disclose such information except where the disclosure would, or would be likely to, prejudice the effective performance of a function imposed or conferred on the auditor by or under an enactment.
- (2C) A person who does not fall within subsection (2A) or (2B) may also disclose such information in accordance with consent given by the Commission or an auditor.
- (2D) Section 49ZA makes further provision about consent for the purposes of subsection (2C).”
- (4) In subsection (3) of that section—
- (a) for “subsection (1)” substitute “ this section ”;
  - (b) in paragraph (a), omit “to imprisonment for a term not exceeding six months or” and “or to both; or”;
  - (c) omit paragraph (b).
- (5) After that section insert—

**“49ZA Consent under section 49(2C)**

- (1) Consent for the purposes of section 49(2C) must be obtained in accordance with this section.
- (2) A person requesting consent (“the applicant”) must make a request for consent which—
  - (a) is in writing,
  - (b) states the name of the applicant and an address for correspondence,
  - (c) describes the information in relation to which consent is requested, and
  - (d) identifies the person to whom the information will be disclosed.
- (3) Consent must be given except where the disclosure would, or would be likely to, prejudice the effective performance of a function imposed or conferred on the Commission or an auditor by or under an enactment.
- (4) Consent may be given or refused orally or in writing; but where it is given or refused orally the consent or refusal must be confirmed in writing.
- (5) A refusal (or, where the refusal is oral, the confirmation of the refusal) must contain the reasons for the refusal.
- (6) A person to whom a request for consent is made must give or refuse consent not later than the twentieth working day following the day on which the request is received.
- (7) “Working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.”

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- (6) Omit section 49A of that Act (disclosure of information by or on behalf of public authorities).
- (7) Nothing in this section has effect in relation to a disclosure made before the commencement of this section.

#### Commencement Information

**I6** S. 164 in force at 31.1.2008 by S.I. 2008/172, art. 2(1)(f)

VALID FROM 01/04/2008

#### 165 Publication of information by the Audit Commission

For subsections (1) to (3) of section 51 of the Audit Commission Act 1998 (c. 18) (publication of information by the Audit Commission) substitute—

“(1) The Commission may publish such information as it thinks fit except where the publication would, or would be likely to, prejudice the effective performance of a function imposed or conferred on the Commission or an auditor by or under an enactment.”

### CHAPTER 3

#### AUDITOR GENERAL FOR WALES AND AUDITORS

#### 166 Registered social landlords in Wales

After section 145C of the Government of Wales Act 1998 (c. 38) insert—

##### “145D Advice and assistance for registered social landlords

- (1) The Auditor General for Wales may, if he thinks it appropriate to do so, provide advice or assistance to a registered social landlord in Wales for the purpose of the exercise by the registered social landlord of its functions.
- (2) Advice or assistance under this section may be provided on such terms and conditions, including conditions as to payment, as the Auditor General for Wales thinks fit.
- (3) This section has effect without prejudice to paragraph 21 of Schedule 8 to the Government of Wales Act 2006 (arrangements between Auditor General for Wales and certain bodies).
- (4) In this section, “registered social landlord in Wales” means a body which is—
  - (a) registered as a social landlord under Chapter 1 of Part 1 of the Housing Act 1996, and
  - (b) mentioned in any of paragraphs (a) to (c) of section 56(2) of that Act.”

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### Commencement Information

**I7** S. 166 in force at 31.1.2008 by S.I. 2008/172, art. 2(1)(g)

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

- (1) The Public Audit (Wales) Act 2004 (c. 23) is amended as follows.
- (2) In section 54 of that Act (restriction on disclosure of information), after subsection (2) insert—
  - “(2ZA) A person who is, or acts on behalf of a person who is, a public authority for the purposes of the Freedom of Information Act 2000, may also disclose such information—
    - (a) in accordance with section 145C(5) or (8) of the Government of Wales Act 1998; or
    - (b) in any other circumstances, except where the disclosure would, or would be likely to, prejudice the effective performance of a function imposed or conferred on the person by or under an enactment.
  - (2ZB) An auditor who does not fall within subsection (2ZA), or a person acting on his behalf, may also disclose such information except where the disclosure would, or would be likely to, prejudice the effective performance of a function imposed or conferred on the auditor by or under an enactment.
  - (2ZC) A person who does not fall within subsection (2ZA) or (2ZB) may also disclose such information in accordance with consent given by the Auditor General for Wales or an auditor.
  - (2ZD) Section 54ZA makes further provision about consent for the purposes of subsection (2ZC).”
- (3) Omit subsection (2A) of that section.
- (4) In subsection (3) of that section, for “subsection (2)” substitute “ this section ”.
- (5) In subsection (4) of that section—
  - (a) in paragraph (a), omit “to imprisonment for a term not exceeding six months or” and “or to both;”;
  - (b) omit paragraph (b).
- (6) After that section insert—

### “54ZA Consent under section 54(2ZC)

- (1) Consent for the purposes of section 54(2ZC) must be obtained in accordance with this section.
- (2) A person requesting consent (“the applicant”) must make a request for consent which—
  - (a) is in writing,
  - (b) states the name of the applicant and an address for correspondence,

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- (c) describes the information in relation to which consent is requested, and
  - (d) identifies the person to whom the information will be disclosed.
- (3) Consent must be given except where the disclosure would, or would be likely to, prejudice the effective performance of a function imposed or conferred on the Auditor General for Wales or an auditor by or under an enactment.
- (4) Consent may be given or refused orally or in writing; but where it is given or refused orally the consent or refusal must be confirmed in writing.
- (5) A refusal (or, where the refusal is oral, the confirmation of the refusal) must contain the reasons for the refusal.
- (6) A person to whom a request for consent is made must give or refuse consent not later than the twentieth working day following the day on which the request is received.
- (7) “Working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.”
- (7) Omit section 54A of that Act (disclosure of information by or on behalf of public authorities).
- (8) Nothing in this section has effect in relation to a disclosure made before the commencement of this section.

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**Commencement Information**

**18** S. 167 in force at 31.1.2008 by S.I. 2008/172, art. 2(1)(h)

**Status:**

Point in time view as at 13/02/2008. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:**

There are currently no known outstanding effects for the Local Government and Public Involvement in Health Act 2007, Part 8.