

# Public Audit (Wales) Bill [HL]

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[AS AMENDED IN STANDING COMMITTEE D]

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A  
**B I L L**

[AS AMENDED IN STANDING COMMITTEE D]

TO

Confer further functions on the Auditor General for Wales; to make provision about the audit of accounts of public bodies in Wales and related matters; to make provision about economy, efficiency and effectiveness in relation to public bodies and registered social landlords in Wales; and for connected purposes.

**B**E IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

**PART 1**

AUDITOR GENERAL FOR WALES

*New functions of the Auditor General for Wales*

**1 Transfer of functions of Assembly**

After section 146 of the Government of Wales Act 1998 (c. 38) insert— 5

**“146A Transfer etc of functions of Assembly**

- (1) The Assembly may, with the consent of the Auditor General for Wales, by order provide for any of its supervisory functions in respect of a public body or a registered social landlord in Wales—
- (a) to be exercised on its behalf by the Auditor General for Wales, 10  
or
  - (b) to be transferred to the Auditor General for Wales.
- (2) In this section—
- “public body” means—
- (a) a body exercising functions of a public nature, or 15

- 
- (b) a body entirely or substantially funded from public money,  
(and for this purpose “body” includes office);  
“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;
- “supervisory functions”, in respect of a public body or a registered social landlord in Wales, means functions of examining, inspecting, reviewing or studying the financial or other management of the public body or registered social landlord or the way in which it discharges any of its functions.
- (3) The Assembly may direct the Auditor General for Wales to prepare a report on his exercise, generally or in respect of a specific body or matter, of any function transferred to him by an order under subsection (1)(b).
- (4) The Auditor General for Wales must lay before the Assembly any report prepared by him in accordance with a direction under subsection (3).
- (5) An order under subsection (1) may contain any appropriate consequential, incidental, supplementary or transitional provisions or savings (including provisions in the form of amendments or repeals of enactments).”
- 2 Additional functions of Auditor General**
- After section 96 of the Government of Wales Act 1998 (c. 38) insert –
- “96A Reports in public interest**
- (1) Where the Auditor General for Wales thinks that it would be in the public interest for him to bring to the public’s attention a matter coming to his notice in the course of an examination or study to which subsection (2) applies, he may prepare a report on that matter.
- (2) This subsection applies to –
- (a) an examination of auditable accounts (other than accounts falling to be examined under section 96(3)(a)), and
- (b) an examination or study under section 100, 145 or 145A, except one undertaken at the request of the body or bodies to which it relates.
- (3) The Auditor General for Wales must, as soon as practicable after preparing a report under subsection (1), lay the report before the Assembly.
- (4) In this section “auditable accounts” has the meaning given in section 95(7).
- 96B Certification of claims, returns etc.**
- (1) The Auditor General for Wales must, if so required by a relevant body, make arrangements for –

- (a) certifying any claim or return in respect of a grant made or subsidy paid to that body by the Assembly, a Minister of the Crown or a public authority;
  - (b) certifying any account submitted by that body to the Assembly or a Minister of the Crown with a view to obtaining payment under a contract between that body and the Assembly or, as the case may be, the Minister; 5
  - (c) certifying that body’s calculation under paragraph 5(6)(a) of Schedule 8 to the Local Government Finance Act 1988 of the amount of its non-domestic rating contribution for a financial year, and for certifying the amount calculated; 10
  - (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 for Wales. 15
- (2) In this section –
- “public authority” means a body established by or under the Community Treaties or any enactment; and
  - “relevant body” means –
- (a) a body whose accounts, or statements of accounts, are “auditable accounts” within the meaning given in section 95(7), or 20
  - (b) a local government body in Wales (within the meaning given in section 12(1) of the Public Audit (Wales) Act 2004). 25

### 96C Ancillary powers of Auditor General

- (1) Arrangements may be made between the Auditor General for Wales and a relevant authority –
- (a) for any function of that authority to be exercised by, or by a member of the staff of, the Auditor General for Wales, or 30
  - (b) for administrative, professional or technical services to be provided by him to that authority or by that authority to him.
- (2) Any arrangements under subsection (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. 35
- (3) The Auditor General for Wales 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 if each considers that to do so would facilitate, or be conducive to, the exercise of his or its own functions. 40
- (4) The Auditor General for Wales may make arrangements under this section on such terms and conditions, including conditions as to payment, as he thinks fit. 45
- (5) In this section –
- “accountancy body” means –

- (a) a body which is a recognised supervisory body for the purposes of Part 2 of the Companies Act 1989, or
  - (b) 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 section; 5
- “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; 10
- “qualified auditor” means a person eligible to be appointed as an auditor under section 14 of the Public Audit (Wales) Act 2004 (auditors appointed in respect of local government bodies in Wales); and
- “relevant authority” means any government department, any local or other public authority or the holder of any public office.” 15

*Accountability of certain public bodies in Wales*

### 3 Studies for improving economy etc in services

After section 145 of the Government of Wales Act 1998 (c. 38) insert – 20

**“145A Studies for improving economy etc in services**

- (1) The Auditor General for Wales may undertake or promote studies designed to enable him to make recommendations for improving economy, efficiency and effectiveness in the discharge of the functions of any relevant body or bodies. 25
- (2) The Auditor General for Wales may also undertake or promote other studies relating to the provision of services by any relevant body or bodies.
- (3) Subsections (1) and (2) do not entitle the Auditor General for Wales to question the merits of the policy objectives of any relevant body. 30
- (4) For the purposes of this section each of the following is a “relevant body” –
  - (a) a person who prepares auditable accounts within the meaning given in section 95(7);
  - (b) any other person (other than a local government body in Wales) in relation to whom, by virtue of provision made by or under this or any other Act, the Auditor General for Wales carries out examinations or studies relating to the economy, efficiency and effectiveness with which that person has used his resources in discharging his functions; 40
  - (c) a person (other than a registered social landlord in Wales) in respect of whom the Auditor General for Wales has functions by virtue of provision made under section 146A.
- (5) Where the Auditor General for Wales undertakes or promotes a study under this section he may arrange for a report containing – 45
  - (a) the results of the study, and



(b) his recommendations (if any),  
 to be laid before the Assembly.

- (6) In this section –  
     “local government body in Wales” has the meaning given in section 12(1) of the Public Audit (Wales) Act 2004; and  
     “registered social landlord in Wales” has the meaning given in section 146A(2).”

#### 4 Studies at request of educational bodies

After section 145A of the Government of Wales Act 1998 (c. 38) (inserted by section 3) insert –

##### “145B Studies at request of educational bodies

- (1) The Auditor General for Wales may undertake studies designed to enable him to make recommendations for improving economy, efficiency and effectiveness in the discharge of the functions of a body specified in the first column of the Table, if requested to do so by the body (or one of the bodies) specified in relation to it in the second column of the Table.

<i>Subject of study</i>	<i>Requesting body</i>	
The governing body of an institution in Wales within the higher education sector.	The governing body or the Higher Education Funding Council for Wales.	20
The governing body of an institution in Wales receiving financial support under Part 1 of the Education Act 1994.	The governing body or the appropriate funding agency.	25
The governing body of an institution in Wales within the further education sector.	The governing body or the National Council for Education and Training for Wales.	

- (2) Subsection (1) does not entitle the Auditor General for Wales to question the merits of the policy objectives of a body.
- (3) Where the Auditor General for Wales undertakes a study under subsection (1) he may, with the consent of the body that requested the study, arrange for a report containing –  
     (a) the results of the study, and  
     (b) his recommendations (if any),  
 to be laid before the Assembly.
- (4) The Auditor General for Wales may, at the request of the Higher Education Funding Council for Wales, give the council advice in connection with the discharge of the council’s functions under section 124B(2)(b) of the Education Reform Act 1988 or paragraph 18(2)(b) of Schedule 7 to that Act.

- (5) The Auditor General for Wales may, at the request of a higher education corporation or further education corporation in Wales –
- (a) advise them in connection with the appointment of persons to audit their accounts;
  - (b) arrange for their accounts for a financial year to be audited by one or more members of the staff of the Auditor General for Wales appointed by the corporation. 5
- (6) In subsection (5) –
- (a) “higher education corporation” and “further education corporation” have the same meaning as in the Further and Higher Education Act 1992; 10
  - (b) references to the accounts of a higher education corporation include references to a statement of accounts prepared by the corporation under section 124B of the Education Reform Act 1988 or paragraph 18 of Schedule 7 to that Act. 15
- (7) This section must be construed as one with the Education Act 1996; and references in any enactment to the Education Acts include this section.”

## 5 Studies relating to registered social landlords

After section 145B of the Government of Wales Act 1998 (c. 38) (inserted by section 4) insert – 20

### “145C Studies relating to registered social landlords

- (1) The Assembly and the Auditor General for Wales may agree on one or more programmes of studies designed to enable the Auditor General for Wales to make recommendations for improving economy, efficiency and effectiveness in the discharge of the functions of registered social landlords in Wales. 25
- (2) If a programme is agreed, the Auditor General for Wales shall ensure that studies giving effect to the programme are undertaken by him or on his behalf.
- (3) It shall be a term of every such programme that the Assembly make good to the Auditor General for Wales the full costs incurred by him in undertaking the programme. 30
- (4) This section does not entitle the Auditor General for Wales to question the merits of the policy objectives of a registered social landlord in Wales. 35
- (5) Where a study is undertaken under this section by the Auditor General for Wales or on his behalf, he may arrange for a report containing –
- (a) the results of the study, and
  - (b) his recommendations (if any),
- to be laid before the Assembly. 40
- (6) A person commits an offence if without reasonable excuse he fails to comply with a requirement imposed under section 95(3)(a) or (b) in relation to a study under this section.
- (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. 45

- (8) The Auditor General for Wales may disclose to the Assembly information obtained by him or a person acting on his behalf in the course of a study under this section.
- (9) “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.”

#### *Funding of Auditor General*

### **6 Expenses and accounts** 10

- (1) Section 93 of the Government of Wales Act 1998 (c. 38) (expenses, fees and accounts) is amended as follows.
- (2) In subsection (1) after “him” insert “or met by virtue of subsection (2A)”.
- (3) After subsection (2) insert—
- “(2A) The Auditor General for Wales may borrow sums in sterling by way of overdraft or otherwise for the purpose of meeting a temporary excess of expenditure over sums otherwise available to meet that expenditure.” 15
- (4) After subsection (6) insert—
- “(6A) Nothing in subsection (5) or (6) authorises the Audit Committee— 20
- (a) to examine that part of any estimate which relates to estimated income or expenditure of the office of the Auditor General for Wales relating to Part 2 of the Public Audit (Wales) Act 2004 (local government bodies in Wales), or
  - (b) to lay an estimate before the Assembly with modifications relating to such estimated income or expenditure.” 25

### **7 Fees**

After section 93 of the Government of Wales Act 1998 (the title to which becomes “Expenses and accounts”) insert—

#### **“93A Fees** 30

- (1) The Auditor General for Wales may charge a fee for auditing a person’s accounts.
- (2) Where the Auditor General for Wales—
- (a) provides services under section 96(3)(b) by carrying out an examination in relation to a person, or
  - (b) at the request of any person other than the Assembly, provides services under section 145A,
- the Auditor General for Wales may charge that person a fee not exceeding the full cost of providing those services. 35
- (3) Where the Auditor General for Wales— 40
- (a) provides services to a body under section 96B, or

(b) provides services at the request of a body under section 145B of this Act or section 44 of the Public Audit (Wales) Act 2004 (studies at request of local government bodies in Wales), the Auditor General for Wales must charge that body a fee which covers the full cost of providing those services. 5

(4) For the purposes of this section “body” includes a local government body in Wales (within the meaning given in section 12(1) of the Public Audit (Wales) Act 2004).”

#### *Administrative matters*

### **8 Auditor General’s seal 10**

In section 90 of the Government of Wales Act 1998 (c. 38) (establishment of office of Auditor General for Wales), after subsection (7) insert –

“(8) The application of the seal of the Auditor General for Wales is to be authenticated by the signature of –

- (a) the Auditor General for Wales, or 15
- (b) any member of his staff authorised by him (generally or specially) for that purpose.

(9) A document purporting to be duly executed under the seal of the Auditor General for Wales or to be signed on his behalf may be received in evidence and, unless the contrary is proved, is to be taken to be so executed or signed.” 20

### **9 Staff etc of the Auditor General**

(1) Section 92 of the Government of Wales Act 1998 (appointment and remuneration of staff etc of Auditor General for Wales) is amended as follows.

(2) Omit subsections (1) and (3). 25

(3) In subsection (6) –

- (a) for “The Assembly” substitute “The Auditor General for Wales”, and
- (b) for “he”, in both places it occurs, substitute “the Minister”.

(4) For subsection (8) substitute –

“(8) Any function of the Auditor General for Wales may be exercised by – 30

- (a) a member of his staff, or
- (b) a person providing services to him,

who is authorised by the Auditor General for Wales for that purpose.

(8A) Any function of the Auditor General for Wales may be exercised jointly by him and a person providing services to him who is authorised by him for that purpose. 35

(8B) Any provision made under subsection (8) for the exercise of any function does not affect the responsibility of the Auditor General for Wales on whose behalf the function is exercised.”

(5) In subsection (9) for “for the Assembly” substitute “within subsection (9A)”. 40

(6) After that subsection insert –

“(9A) Accounts (or statements of accounts) are within this subsection if, in accordance with provision made by or under this or any other Act, they –

- (a) fall to be examined by the Auditor General for Wales, and 5
- (b) are required to be laid before the Assembly.”

## 10 Accounting officer

After section 94 of the Government of Wales Act 1998 (c. 38) insert –

### “94A Accounting officer

- (1) The accounting officer for the Wales Audit Office is the Auditor General for Wales. 10
- (2) But where –
  - (a) the Auditor General for Wales is incapable of discharging his responsibilities as accounting officer, or
  - (b) the office of Auditor General for Wales is vacant, 15the Audit Committee may designate a member of the staff of the Auditor General for Wales to be the accounting officer for so long as paragraph (a) or (b) applies.
- (3) The accounting officer for the Wales Audit Office has, in relation to the accounts of the Auditor General for Wales and the finances of the Wales Audit Office, the responsibilities which are from time to time specified by the Audit Committee. 20
- (4) In this section references to responsibilities include in particular –
  - (a) responsibilities in relation to the signing of accounts,
  - (b) responsibilities for the propriety and regularity of the finances of the Wales Audit Office, and 25
  - (c) responsibilities for the economy, efficiency and effectiveness with which the resources of the Wales Audit Office are used.
- (5) The responsibilities which may be specified under this section include responsibilities owed to – 30
  - (a) the Audit Committee, or
  - (b) the House of Commons or its Committee of Public Accounts.
- (6) If requested to do so by the House of Commons Committee of Public Accounts, the Audit Committee may – 35
  - (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.
- (7) In this section “the Wales Audit Office” means the Auditor General for Wales and the members of his staff.” 40

## 11 Access to information, etc by Auditor General

For section 95 of the Government of Wales Act 1998 (access to documents by

Auditor General for Wales) substitute –

**“95 Access to documents by Auditor General**

- (1) The Auditor General for Wales has a right of access at all reasonable times to every document relating to a relevant person which appears to him necessary – 5
- (a) for the purposes of his examination of any auditable accounts;
  - (b) for the purposes of undertaking studies under section 145A or 145C;
  - (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 any person has used his resources in discharging his functions. 10
- (2) The documents relating to a relevant person to which the right conferred by subsection (1) applies may include, in particular – 15
- (a) a document which is held or controlled by 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 held or controlled by 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; 20
  - (c) a document of a description specified in an order made by the Assembly. 25
- (3) The Auditor General for Wales may require a person whom he thinks has information of the kind mentioned in subsection (4) –
- (a) to give him any assistance, information and explanation which the Auditor General for Wales thinks necessary for any of the purposes mentioned in paragraphs (a) to (c) of subsection (1); 30
  - (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; 35
  - (c) to provide any facility which the Auditor General for Wales may reasonably require for any of the purposes mentioned in paragraphs (a) to (c) of subsection (1).
- (4) The information is information which relates to – 40
- (a) a relevant person;
  - (b) a document to which the right conferred by subsection (1) applies; or
  - (c) a person who holds or controls such a document.
- (5) The Auditor General for Wales may, for the purposes of his examination of any auditable accounts, require a relevant person to provide him, at times specified by him, with accounts of such of the person’s transactions as he may specify. 45

- (6) 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 relevant person in another contract.
- (7) In this section – 5  
“auditable accounts” means any accounts or statement of accounts falling to be examined by the Auditor General for Wales in accordance with any provision made by or by virtue of this or any other Act; and  
“relevant person” means – 10  
(a) in a case within subsection (1)(a) –  
(i) the person by whom the auditable accounts are prepared, and 15  
(ii) in the case of any accounts which the Assembly is directed to prepare under section 97, any person to whose financial affairs and transactions the auditable accounts are to relate by virtue of directions under subsection (2) of that section, and  
(b) in any other case, a person to whom the study or examination relates. 20
- (8) Before making an order under subsection (2)(c), the Assembly must consult the Treasury and the Auditor General for Wales.”

## PART 2

### LOCAL GOVERNMENT BODIES IN WALES

#### CHAPTER 1 25

##### 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 – 30  
(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); 35  
(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 or a scheme to which section 4 of that Act applies; 40  
(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 –
- (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. 5
- (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 10**

- (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. 15
- (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. 20
- (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 – 25
- (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. 30
- (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. 35
- (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. 40



- (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. 5

## 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. 10
- (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). 15

## 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. 20
- (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. 25
- (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. 30
- (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. 35
- (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. 40

## 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; 10
  - (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. 15
- (3) An auditor must comply with any provisions of a code of audit practice issued under section 16 which – 20
  - (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 – 25
  - (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 30

- (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 – 35
  - (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; 40
  - (c) a document of a description specified in an order made by the Assembly. 45

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- (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) – 5
- (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 – 10
    - (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 – 15
- (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. 20
- (7) Before making an order under subsection (2)(c) the Assembly must consult – 25
- (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 – 30
- (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 – 35
- (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. 40

## **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
  - (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.

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*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 – 5
  - (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. 10
- (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. 15
- (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. 20

**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 – 25
  - (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 – 30
  - (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. 35

**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 – 40

- 
- (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; 5
- (b) a conservation board;
- (c) an internal drainage board;
- (d) a local probation board.
- (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. 10
- (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 15  
(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). 20
- (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
- 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. 30
- (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. 35
- (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; 40
- (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.

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- (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; 5
  - (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 more time to comply with its duties under subsections (4) and (5) in relation to the report or recommendation. 10
- (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— 15
- (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); 20
  - (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. 25
- (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 30
  - (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), 35
  - (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— 40
- (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); 45

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- (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. 5
- (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 – 10
- (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. 15
- (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; 20
  - (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 25
  - (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. 30
- (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 – 35
- (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. 40
- (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. 5
- (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. 10
- (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; 15
  - (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 20
  - (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 – 25
- (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; 30
  - (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 – 35
- (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). 40
- (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 –
- (a) inspect the accounts to be audited and all books, deeds, contracts, bills, vouchers and receipts relating to them; 5
  - (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. 10
- (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; 15
  - (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 – 20
- (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. 25
- (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. 30

### **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; 35
  - (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 – 40
- (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. 5
- (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. 10
- (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. 15
- (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. 20
- (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 – 25
  - (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. 30

### *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. 35
- (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; 40
  - (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;

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- (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; 5
  - (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; 10
  - (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 – 15
    - (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 20
    - (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; 25
  - (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 – 30
- (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. 35
- (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, 40
  - (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. 45

- (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. 5

### 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. 10
- (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. 15
- (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; 20
  - (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. 25
- (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); 30
  - (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

### 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. 40

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- (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. 5

### **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. 10
- (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 – 15
- (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. 20

### *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. 25
- (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. 30
- (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. 35
- (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; 40
- (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. 5
- (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 – 10
  - (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 – 15
  - (a) section 13(1);
  - (b) sections 17 to 24;
  - (c) sections 27 to 32;
  - (d) section 37;
  - (e) section 39. 20

### 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; 25
  - (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; 30
  - (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 – 35
  - (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 – 40
  - (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 5
  - (b) expenses are incurred by an auditor in connection with proceedings for the offence.
- (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 10**
- (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. 15

## CHAPTER 2

### STUDIES AND PERFORMANCE STANDARDS

- Studies 20*
- 41 Studies for improving economy etc in services**
- (1) The Auditor General for Wales must for each financial year undertake or promote studies designed to enable him to make recommendations –
- (a) for improving economy, efficiency and effectiveness in the discharge of the functions of best value authorities in Wales; 25
  - (b) for improving economy, efficiency and effectiveness in the provision of services provided by other local government bodies in Wales;
  - (c) for improving the financial or other management of local government bodies in Wales.
- (2) The studies which the Auditor General for Wales is required to undertake or promote under subsection (1) include in particular – 30
- (a) studies designed to enable the Auditor General for Wales to determine what directions he should give under section 47;
  - (b) studies of information published in pursuance of section 47 which are designed to enable the Auditor General for Wales to determine, in relation to each financial year, what comparative information to publish himself about the standards of performance achieved by bodies which are relevant bodies for the purposes of that section. 35
- (3) The Auditor General for Wales may undertake or promote other studies relating to the provision of services by local government bodies in Wales. 40
- (4) Where the Auditor General for Wales undertakes or promotes a study under this section, he must publish or otherwise make available –



- (a) the results of the study, and
  - (b) any recommendations made by him.
- (5) Before undertaking or promoting a study under this section, other than a study of a kind mentioned in paragraph (a) or (b) of subsection (2), the Auditor General for Wales must consult – 5
  - (a) any associations of local government bodies in Wales which appear to him to be concerned, and
  - (b) any associations of employees which appear to him to be appropriate.
- (6) The Auditor General for Wales and the Assembly must co-operate with each other with respect to the exercise of their respective functions under this section and sections 94 and 95 of the Health and Social Care (Community Health and Standards) Act 2003 (c. 43) (reviews, investigations and studies by Assembly). 10

#### **42 Studies on impact of statutory provisions etc**

- (1) The Auditor General for Wales must undertake or promote studies designed to enable him to prepare reports as to the impact of – 15
  - (a) the operation of any statutory provisions, or
  - (b) any directions or guidance given by the Assembly (whether or not under a statutory provision),on economy, efficiency and effectiveness in the discharge of the functions of local government bodies in Wales. 20
- (2) The Auditor General for Wales must from time to time lay before the Assembly a report of any matters which, in his opinion –
  - (a) arise out of studies under this section, and
  - (b) ought to be drawn to the attention of the Assembly. 25
- (3) Before undertaking or promoting a study under this section, the Auditor General for Wales must consult –
  - (a) any associations of local government bodies in Wales which appear to him to be concerned, and
  - (b) any associations of employees which appear to him to be appropriate. 30
- (4) The Auditor General for Wales and the Assembly must co-operate with each other with respect to the exercise of their respective functions under this section and section 95(2) of the Health and Social Care (Community Health and Standards) Act 2003 (c. 43) (studies by Assembly on impact of statutory provisions). 35

#### **43 Co-operation with Audit Commission**

The Auditor General for Wales must co-operate with the Audit Commission where it seems to him appropriate to do so for the efficient and effective discharge of his functions under sections 41 and 42.

#### **44 Studies at request of local government bodies in Wales** 40

- (1) The Auditor General for Wales may, at the request of a local government body in Wales, undertake or promote studies designed to enable him to make recommendations for improving economy, efficiency and effectiveness in the discharge of the functions of the body.

- (2) Before making the request the body must consult any associations of employees which appear to it to be appropriate.

#### **45 Benefit administration studies for Secretary of State**

- (1) The Auditor General for Wales may, at the request of the Secretary of State, conduct, or assist the Secretary of State in conducting, benefit administration studies. 5
- (2) Benefit administration studies are studies designed to enable recommendations to be made for improving economy, efficiency, and effectiveness and quality of performance in the discharge by one or more local authorities in Wales of functions relating to the administration of housing benefit or council tax benefit (or both). 10
- (3) Any information obtained in the course of a benefit administration study may be disclosed by the Auditor General for Wales to the Secretary of State for the purposes of any functions of the Secretary of State which are connected with housing benefit or council tax benefit. 15
- (4) The Auditor General for Wales must send to the Secretary of State a copy of a report of a benefit administration study carried out by the Auditor General for Wales.
- (5) The Secretary of State or the Auditor General for Wales may send a copy of a report of a benefit administration study to any local authority to which the study relates. 20
- (6) The Secretary of State may publish a report of a benefit administration study in conjunction with the Auditor General for Wales.
- (7) The Auditor General for Wales may conduct, or assist the Secretary of State in conducting, a benefit administration study only if the Secretary of State has made arrangements for the payment to the Auditor General for Wales of a fee in respect of the study. 25
- (8) The amount of the fee must be a reasonable amount agreed between the Secretary of State and the Auditor General for Wales.

*Performance standards* 30

#### **46 Performance standards: relevant bodies**

- (1) Each of these local government bodies in Wales is a relevant body for the purposes of sections 47 to 49—
- (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); 35
  - (c) a National Park authority for a National Park in Wales;
  - (d) a police authority for a police area in Wales;
  - (e) a fire and rescue authority in Wales 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. 40

- (2) The Assembly may by order provide for sections 47 to 49 to have effect as if any other local government body in Wales were a relevant body for the purposes of those sections.
- (3) In this section “local authority in Wales” does not include a community council. 5

#### 47 Publication of information as to standards of performance

- (1) The Auditor General for Wales must give any directions which he thinks fit for requiring relevant bodies to publish the information mentioned in subsection (2).
- (2) The information is information relating to their activities in a financial year which will, in the opinion of the Auditor General for Wales, facilitate the making of appropriate comparisons –
  - (a) between the standards of performance achieved by different relevant bodies in the financial year, or
  - (b) between the standards of performance achieved by relevant bodies in different financial years. 15
- (3) The comparisons are to be made by reference to the criteria of cost, economy, efficiency and effectiveness.
- (4) If a relevant body is required by a direction under this section to publish information in relation to a financial year, it must –
  - (a) make arrangements for collecting and recording the information which secure that the information is available for publication and (so far as practicable) that everything published in pursuance of the direction is accurate and complete, 20
  - (b) publish the information in accordance with the direction and in a method permitted under section 48 before the end of the period of 9 months starting immediately after the end of the financial year, and 25
  - (c) keep a document containing any information published in pursuance of the direction available for inspection by local government electors for its area. 30
- (5) The Assembly may by order vary the period specified in subsection (4)(b).
- (6) The period specified in an order under subsection (5) must not be longer than 9 months starting immediately after the end of the financial year in question.
- (7) A local government elector for the area of a relevant body may –
  - (a) at all reasonable times and without payment, inspect and make copies of the whole or any part of a document kept available for inspection by the body under subsection (4)(c); 35
  - (b) require copies of the whole or part of any such document to be delivered to him on payment of a reasonable sum for each copy.
- (8) A person who has custody of a document kept available for inspection under subsection (4)(c) commits an offence if –
  - (a) he obstructs a person in the exercise of his rights under subsection (7), or
  - (b) he refuses to comply with a requirement under subsection (7)(b). 40

- (9) A person guilty of an offence under subsection (8) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### **48 Permitted methods of publishing information under section 47**

- (1) The permitted methods of publication referred to in section 47(4)(b) are these.
- (2) The relevant body may publish the information in a newspaper which is – 5
- (a) printed for sale, and
  - (b) circulating in its area.
- (3) If the relevant body ensures that the distribution condition is met with respect to the information, it may publish the information in a newspaper or periodical publication which – 10
- (a) is produced and distributed by another person (other than a local authority company), and
  - (b) is free of charge to the recipient.
- (4) A relevant body ensures that the distribution condition is met with respect to information if – 15
- (a) in any case, the body takes all reasonable steps to secure that a copy of a publication containing the information is distributed to each dwelling house in its area;
  - (b) in a case where the body considers that the information is of concern to persons carrying on business in its area, the body takes such steps as it considers reasonable and practicable to secure that a copy of a publication containing the information is also distributed to business premises in its area. 20
- (5) A local authority company is a company under the control of a local authority.
- (6) Section 68(1) of the Local Government and Housing Act 1989 (c. 42) (company under control of local authority) has effect for the purposes of subsection (5) as it has effect for the purposes of Part 5 of that Act. 25

#### **49 Directions under section 47**

- (1) A direction under section 47 requiring the publication of information must – 30
- (a) identify the financial year or years in relation to which the information is to be published,
  - (b) specify or describe the activities to which the information is to relate, and
  - (c) make provision as to the matters to be contained in the information and as to the form in which it is to be published. 35
- (2) A direction under section 47 –
- (a) may be given so as to apply either to all relevant bodies or to all relevant bodies of a description specified in the direction;
  - (b) may be varied or revoked by a subsequent direction under that section.
- (3) Before giving a direction under section 47 which imposes a new requirement on a relevant body as to the publication of any information the Auditor General for Wales must consult – 40
- (a) any associations of relevant bodies he thinks fit, and
  - (b) any other persons he thinks fit.

- 
- (4) A direction under section 47 imposing a new requirement on a relevant body as to the publication of any information must not be given later than the 31 December in the financial year which precedes the relevant financial year.
- (5) The relevant financial year is the financial year in relation to which the information is to be published. 5
- (6) If the Auditor General for Wales gives a direction under section 47 he must –
- (a) publish the direction in the manner he considers appropriate for bringing it to the attention of members of the public, and
  - (b) send a copy of the direction to every relevant body on which duties are imposed by virtue of the direction. 10
- (7) References in this section to the imposition of a new requirement on a relevant body as to the publication of information are to –
- (a) the imposition of a requirement by the first direction under section 47 to apply to the body;
  - (b) any subsequent extension of or addition to – 15
    - (i) the matters to be contained in the information which the body is required to publish in relation to a financial year in pursuance of directions under section 47, or
    - (ii) the activities to which any such information is to relate.

**CHAPTER 3** 20

BEST VALUE

**50 Best value audit and inspections**

Schedule 1 has effect (amendments to Part 1 of the Local Government Act 1999 (c. 27): best value).

**CHAPTER 4** 25

GENERAL

**51 Social security references and reports to Secretary of State**

- (1) The Auditor General for Wales may refer to the Secretary of State any matter arising from an audit or study under this Part if it appears that the matter may be relevant for the purposes of any of the functions of the Secretary of State relating to social security. 30
- (2) An auditor may refer to the Secretary of State any matter arising from an audit under Chapter 1 if it appears that the matter may be relevant for the purposes of any of the functions of the Secretary of State relating to social security.
- (3) The Auditor General for Wales may send to the Secretary of State a copy of any report – 35
- (a) of which a copy is sent to the Auditor General for Wales under section 22(5) or (6), and
  - (b) which contains observations on the administration by a local authority in Wales of housing benefit or council tax benefit. 40

## **52 Rights of Auditor General for Wales to documents and information**

- (1) The Auditor General for Wales 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 Part.
- (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; 10
  - (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. 15
- (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) The Auditor General for Wales may require a person whom he thinks has information of the kind mentioned in subsection (5) – 20
  - (a) to give him any assistance, information and explanation which the Auditor General for Wales thinks necessary for the purposes of his functions under this Part;
  - (b) to attend before him in person to – 25
    - (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 – 30
  - (a) a local government body in Wales;
  - (b) a document to which the right conferred by subsection (1) applies;
  - (c) a person who holds or controls such a document.
- (6) For the purpose of assisting the Auditor General for Wales to maintain proper standards in the auditing of accounts of local government bodies in Wales, the Auditor General for Wales may require a local government body in Wales to make available for inspection by him or on his behalf – 35
  - (a) the accounts of the body, and
  - (b) any other documents relating to the body which might reasonably be required by an auditor for the purposes of an audit under Chapter 1. 40
- (7) Every local government body in Wales must provide the Auditor General for Wales with every facility and all information which he may reasonably need for the purposes of his functions under this Part.
- (8) Before making an order under subsection (2)(c) the Assembly must consult – 45
  - (a) the Auditor General for Wales, and
  - (b) any associations of local authorities in Wales which appear to it to be concerned.

### 53 Rights of Auditor General for Wales to documents and information: offences

- (1) A person commits an offence if without reasonable excuse he fails to comply with a requirement imposed by the Auditor General for Wales under section 52(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 the Auditor General for Wales 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 52(5) at the time the requirement was imposed.

### 54 Restriction on disclosure of information

- (1) This section applies if information relating to a particular body or other person is obtained by the Auditor General for Wales or an auditor, or by a person acting on behalf of the Auditor General for Wales or an auditor –
  - (a) pursuant to a provision of this Part or Part 1 of the Local Government Act 1999 (c. 27), or
  - (b) in the course of an audit, study or inspection under a provision of this Part, section 145C of the Government of Wales Act 1998 (c. 38) or Part 1 of the Local Government Act 1999.
- (2) The information must not be disclosed except in accordance with any of these –
  - (a) with the consent of the body or person to whom the information relates;
  - (b) for the purposes of any functions of the Auditor General for Wales or an auditor under this Part or Part 1 of the Local Government Act 1999;
  - (c) for the purposes of the functions of the Secretary of State relating to social security;
  - (d) for the purposes of the functions of a Local Commissioner in Wales under Part 3 of the Local Government Act 2000 (c. 22);
  - (e) for the purposes of any functions of the Assembly which are connected with the discharge of social services functions by local authorities in Wales;
  - (f) in accordance with section 145C(5) or (8) of the Government of Wales Act 1998;
  - (g) for the purposes of any criminal investigation which is being or may be carried out, whether in the United Kingdom or elsewhere;
  - (h) for the purposes of any criminal proceedings which have been or may be initiated, whether in the United Kingdom or elsewhere;
  - (i) for the purposes of the initiation or bringing to an end of any such investigation or proceedings;

- 
- (j) for the purpose of facilitating a determination of whether any such investigation or proceedings should be initiated or brought to an end.
- (3) A person commits an offence if he discloses information in contravention of subsection (2).
- (4) A person guilty of an offence under subsection (3) is liable – 5
- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (5) In subsection (2) “social services functions” has the same meaning as in the Local Authority Social Services Act 1970 (c. 42). 10
- (6) The Secretary of State may by order made by statutory instrument amend or repeal the preceding provisions of this section.
- (7) An order under subsection (6) may be made only if – 15
- (a) section 49 of the Audit Commission Act 1998 (c. 18) (restriction on disclosure of information) has been amended or repealed in the same Session as that in which this Act is passed or in any later Session;
- (b) the Secretary of State thinks that the amendments or repeals to be made by the order under subsection (6) will (subject to paragraph (c)) have the same effect as the amendments to or repeal of section 49 of that Act; 20
- (c) the order would not have the effect of imposing any further restriction on the disclosure of information under this section.
- (8) An order under subsection (6) may not be made unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament.
- 55 Supply of benefit information to Auditor General for Wales** 25
- The Secretary of State may supply to the Auditor General for Wales any information held by the Secretary of State which –
- (a) relates to housing benefit or council tax benefit, and
- (b) appears to the Secretary of State to be relevant to the exercise of any function of the Auditor General for Wales. 30
- 56 Publication of information by Auditor General for Wales**
- (1) The Auditor General for Wales may publish information with respect to any of these – 35
- (a) the making by an auditor of a report under section 22;
- (b) the subject-matter of a report under section 22;
- (c) the decision made and other action taken by a body in response to the receipt of a report under section 22 or to anything in a report under section 22;
- (d) a contravention by a body of regulations made under section 39;
- (e) a contravention by a body of an obligation imposed on the body under section 47(4). 40
- (2) The information that may be published under subsection (1)(a), (b) or (c) does not include information excluded under section 26(5) from an approved summary published under section 26(4)(c).



- (3) The Auditor General for Wales must inform a body before publishing information under subsection (1) relating to it.
- (4) Information published under subsection (1) must be published in any manner which the Auditor General for Wales considers appropriate for bringing the information to the attention of members of the public who may be interested in it. 5

## 57 Provision of information to Audit Commission

- (1) The Auditor General for Wales must, on request, provide the Audit Commission with any information it may reasonably require for the purpose of making comparisons, in the discharge of its functions under sections 33 and 34 of the Audit Commission Act 1998 (c. 18), between local government bodies in Wales and other local government bodies. 10
- (2) In this section “local government body” has the meaning given in section 53(1) of the Audit Commission Act 1998.

## 58 Orders and regulations

15

- (1) Any power conferred on the Assembly by this Part to make orders or regulations is exercisable by statutory instrument.
- (2) Any power conferred on the Assembly or the Secretary of State to make an order or regulations under this Part includes power –
  - (a) to make such incidental, consequential, transitional or supplementary provision as the Assembly or the Secretary of State thinks appropriate; 20
  - (b) to make different provision for different cases, including different provision for different localities and different bodies and descriptions of bodies.

## 59 Interpretation of Part 2

25

- (1) This section applies for the interpretation of this Part.
- (2) “Auditor” in relation to accounts of a body –
  - (a) means a person appointed by the Auditor General for Wales under section 13 to act as auditor of those accounts;
  - (b) to the extent provided by section 15(3), includes a person assisting an auditor appointed under section 13 under arrangements approved under section 15(1). 30
- (3) “The auditor”, if there is more than one auditor, means any one of them (subject to any express provision to the contrary).
- (4) “Best value authority in Wales” means a local government body in Wales which is also a best value authority for the purposes of Part 1 of the Local Government Act 1999 (c. 27). 35
- (5) “Local authority in Wales” means a county council, county borough council or community council in Wales.
- (6) “Local government elector” means a person registered as a local government elector in the register of electors in accordance with the provisions of the Representation of the People Acts. 40

- (7) A reference to a local government elector for an area, in relation to a National Park authority which is the local planning authority for a National Park, is to a local government elector for any area the whole or part of which is comprised in the Park.
- (8) “Statutory provision” means a provision contained in or having effect under an enactment. 5

### PART 3

#### WELSH NHS BODIES

#### 60 Meaning of “Welsh NHS body”

- In this Part “Welsh NHS body” means – 10
- (a) a Local Health Board,
  - (b) a Special Health Authority performing functions only or mainly in respect of Wales,
  - (c) a National Health Service trust all or most of whose hospitals, establishments and facilities are situated in Wales or any trustees appointed in pursuance of section 11 of the National Health Service and Community Care Act 1990 (c. 19) for such a trust, or 15
  - (d) a body of trustees appointed in pursuance of section 29(1) of the National Health Service Reorganisation Act 1973 (c. 32) and section 95(1) of the National Health Service Act 1977 (c. 49) for a trust all or most of whose hospitals, establishments and facilities are situated in Wales. 20

#### 61 Audit of Welsh NHS bodies

- (1) The accounts prepared by a Welsh NHS body under section 98(2) of the National Health Service Act 1977 (accounts of NHS bodies) for a financial year must be submitted by that body to the Auditor General for Wales no later than five months after the end of that year. 25
- (2) The Auditor General for Wales must –
- (a) examine and certify any accounts submitted to him under this section, and 30
  - (b) no later than four months after the accounts are submitted to him, lay before the Assembly a copy of them as certified by him together with his report on them.
- (3) In examining any accounts submitted to him under this section, the Auditor General for Wales must, in particular, satisfy himself – 35
- (a) that the expenditure to which the accounts relate has been incurred lawfully and in accordance with the authority which governs it, and
  - (b) that the body to which the accounts relate has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources. 40

#### 62 Co-operation with Assembly, Audit Commission or CHAI

- The Auditor General for Wales must co-operate with –
- (a) the Assembly,

- (b) the Audit Commission, or
  - (c) the Commission for Healthcare Audit and Inspection,
- where it seems to him appropriate to do so for the efficient and effective discharge of his functions in relation to Welsh NHS bodies.

**63 Audit of accounts of officers of Welsh NHS bodies** 5

- (1) This section applies where an officer of a Welsh NHS body receives money or other property –

- (a) on behalf of that body, or
- (b) for which he ought to account to that body.

- (2) The officer must keep accounts. 10

- (3) The accounts of the officer must –
- (a) be made up each year to 31 March, and
  - (b) be audited by the Auditor General for Wales,

and section 61 applies with the necessary modifications in relation to the accounts and audit. 15

**64 Provision of information by CHAI**

- (1) The Commission for Healthcare Audit and Inspection must, on request, provide the Auditor General for Wales with any information he may reasonably require for the purpose of making comparisons, in the discharge of his functions under sections 145 and 145A of the Government of Wales Act 1998 (c. 38) in relation to a Welsh NHS body, between the Welsh NHS body and English NHS bodies and cross-border SHAs. 20

- (2) Subsection (1) does not require information to be provided in circumstances where (but for that subsection) the disclosure of the information would contravene section 136 of the Health and Social Care (Community Health and Standards) Act 2003 (c. 43) (restriction on disclosure of personal information by CHAI). 25

- (3) In this section “English NHS body” and “cross-border SHA” have the meaning given by section 148 of that Act.

**PART 4** 30

MISCELLANEOUS AND GENERAL

*Miscellaneous*

**65 Public bodies subject to audit etc**

- (1) The Government of Wales Act 1998 is amended as follows.

- (2) In section 144 (accounts, audit and reports), after subsection (8) insert – 35

“(8A) The Assembly may, with the consent of the Secretary of State, by order amend any of the Parts of Schedule 17 in the manner mentioned in paragraph (a) or (c) of subsection (8).”

- (3) In subsection (9) of that section, after paragraph (b) add “and  
(c) “public body” means –  
(i) a body exercising functions of a public nature, or  
(ii) a body entirely or substantially funded from public money.” 5
- (4) In Schedule 17, in Part 1 (bodies subject generally to audit etc provisions), in paragraph 1 omit “(other than the Care Council for Wales)”.
- 66 Minor and consequential amendments**
- Schedule 2 (which makes minor and consequential amendments) has effect.
- 67 Functions transferred to Assembly** 10
- (1) Any reference in Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I.1999/672) to an enactment amended by this Act is to be treated as a reference to that enactment as amended by this Act.
- (2) Subsection (1) does not affect the power to make further Orders varying or omitting those references. 15
- Transitional provision*
- 68 Transfer of property etc to Auditor General**
- (1) Any property, rights and liabilities which are the subject of a transfer scheme are to be transferred to and vested in the Auditor General for Wales in accordance with the scheme. 20
- (2) For this purpose “a transfer scheme” means a scheme contained in an order made under paragraph 1 of Schedule 3.
- (3) Schedule 3 (which makes provision about schemes for the transfer of property etc) has effect.
- 69 Local government bodies in Wales** 25
- (1) Subsection (2) applies where, immediately before the commencement of paragraph 38(3) of Schedule 2, an appointment of a person as an auditor in relation to accounts of a local government body in Wales has effect under Part 2 of the Audit Commission Act 1998 (c. 18).
- (2) Until the end of the period for which that appointment was made, Part 2 of this Act applies, in relation to that body, as if the appointment had been made under section 13. 30
- (3) Subsection (4) applies where, immediately before the commencement of paragraph 38(3) of Schedule 2 – 35
- (a) arrangements approved under section 3(9) of the Audit Commission Act 1998 have effect;
- (b) the arrangements authorise a person to carry out specified functions of an auditor appointed under Part 2 of that Act in relation to accounts of a local government body in Wales; and

- (c) the appointment of the auditor in relation to the accounts of that body has effect under Part 2 of that Act.
  - (4) Until the end of the period for which the arrangements have effect, or (if sooner) the end of the period for which the appointment of the auditor was made, Part 2 of this Act applies, in relation to that body, as if – 5
    - (a) the arrangements had been approved under section 15(1);
    - (b) the appointment of the auditor had been made under section 13; and
    - (c) the arrangements authorised the person to carry out functions of the auditor which correspond to the functions of the auditor that he is authorised to carry out by the arrangements. 10
  - (5) Subsection (6) applies where, immediately before the commencement of paragraphs 23, 24 and 38(3) of Schedule 2, the Audit Commission is promoting or undertaking a study under Part 3 of the Audit Commission Act 1998 (c. 18) in connection with a local government body in Wales.
  - (6) After (and notwithstanding) that commencement, Part 3 of the Audit Commission Act 1998 continues to have effect in relation to the promotion or undertaking of the study. 15
  - (7) In this section “local government body in Wales” has the meaning given in section 12(1).
- 70 Welsh NHS bodies** 20
- (1) Subsection (2) applies where, immediately before the commencement of section 61, an appointment of a person as an auditor in relation to accounts of a Welsh NHS body has effect under Part 2 of the Audit Commission Act 1998.
  - (2) Until the end of the period for which that appointment was made, sections 61 and 63 apply, in relation to that Welsh NHS body, as if that person were authorised under section 92(8) of the Government of Wales Act 1998 (c. 38) to exercise the functions of the Auditor General for Wales under sections 61 and 63. 25
  - (3) Subsection (4) applies where, immediately before the commencement of section 61 and paragraph 38(2) of Schedule 2, the Audit Commission is promoting or undertaking a study under section 33 or 35 of the Audit Commission Act 1998 in connection with a Welsh NHS body. 30
  - (4) After (and notwithstanding) that commencement, section 33 or, as the case may be, 35 of that Act continues to have effect in relation to the promoting or undertaking of the study. 35
  - (5) In this section “Welsh NHS body” has the meaning given in section 60.

*General*

**71 Interpretation**

In this Act –

- “the Assembly” means the National Assembly for Wales; 40
- “the Audit Commission” means the Audit Commission for Local Authorities and the National Health Service in England and Wales;
- “body” includes office;

“financial year” means the 12 months ending with 31 March.

## **72 Repeals**

The enactments mentioned in Schedule 4 are repealed to the extent specified.

## **73 Commencement**

- (1) The preceding provisions (and the Schedules), except section 71, come into force in accordance with provision made by the Assembly by order. 5
- (2) The power to make orders under subsection (1) is exercisable by statutory instrument.
- (3) Orders under subsection (1) –
  - (a) may include transitional provision or savings; 10
  - (b) may make different provision for different purposes.

## **74 Extent**

- (1) The amendment or repeal of a provision by this Act has the same extent as the provision amended or repealed.
- (2) Subject to that, this Act extends to England and Wales only. 15

## **75 Short title**

This Act may be cited as the Public Audit (Wales) Act 2004.

## SCHEDULES

### SCHEDULE 1

Section 50

#### BEST VALUE AUDIT AND INSPECTIONS

- 1 The Local Government Act 1999 (c. 27) is amended as follows.
- 2 In section 1 (best value authorities) after subsection (5) insert – 5
  - “(6) For the purposes of this Part each of these is a best value authority in Wales –
    - (a) a local authority in Wales;
    - (b) a National Park authority for a National Park in Wales;
    - (c) a police authority for a police area in Wales; 10
    - (d) a fire and rescue authority in Wales 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.
  - (7) In subsection (6) “local authority in Wales” means a county council, county borough council or community council in Wales.” 15
- 3 After section 2 insert –

**“2A Power to extend or disapply: best value authorities in Wales**

  - (1) The National Assembly for Wales may by order provide that any of the bodies mentioned in subsection (2) is a best value authority in Wales for the purposes of this Part. 20
  - (2) The bodies are –
    - (a) a levying body within the meaning of section 74(1) of the Local Government Finance Act 1988;
    - (b) a body to which section 75 of that Act applies (special levies).
  - (3) An order under subsection (1) providing for a body to be a best value authority in Wales may provide for section 7 to have effect in relation to that body with specified modifications. 25
  - (4) The National Assembly for Wales may by order provide that a best value authority in Wales specified, or of a description specified, in the order is not to be subject, in relation to such functions as may be specified, to a duty – 30
    - (a) which is specified in the order, and
    - (b) to which the authority would otherwise be subject under this Part.”
- 4 (1) Section 4 (performance indicators and standards) is amended as follows. 35

- (2) In subsection (4)(b) for “Audit Commission” substitute “relevant audit authority”.
- (3) After subsection (5) insert—
- “(6) The relevant audit authority is—
- (a) in relation to best value authorities in Wales, the Auditor General for Wales; 5
- (b) in relation to other best value authorities, the Audit Commission.”
- 5 (1) Section 7 (audit) is amended as follows.
- (2) In subsection (3) at the beginning insert “If an authority’s auditor is appointed by the Audit Commission,” and for “an auditor’s” substitute “the auditor’s” 10
- (3) After subsection (3) insert—
- “(3A) If an authority’s auditor is appointed by the Auditor General for Wales, sections 18 and 19 of the Public Audit (Wales) Act 2004 (auditor’s rights to documents and information) shall have effect in relation to the auditor’s functions under this Part as those sections have effect in relation to his functions under Chapter 1 of Part 2 of that Act.” 15
- (4) In subsection (4)(e) at the beginning insert “if the auditor is appointed by the Audit Commission,” 20
- (5) In subsection (4) after “section 10,” insert—
- “(ea) if the auditor is appointed by the Auditor General for Wales, recommending whether the Auditor General for Wales should carry out a best value inspection of the authority under section 10A,” 25
- (6) In subsection (5)(b) at the beginning insert “if the auditor is appointed by the Audit Commission,”
- (7) In subsection (5) after “Audit Commission,” insert—
- “(ba) if the auditor is appointed by the Auditor General for Wales, to the Auditor General for Wales,” 30
- (8) In subsection (7)—
- (a) for “reference in subsection (1)” substitute “references in subsections (1), (3) and (3A)”;
- (b) for “is” substitute “are”; 35
- (c) for “a reference” substitute “references”.
- (9) In subsection (8)(a) at the beginning insert “if he was appointed by the Audit Commission,”
- (10) In subsection (8) after “Audit Commission Act 1998,” insert—
- “(aa) if he was appointed by the Auditor General for Wales, is no longer eligible for appointment under section 14 of the Public Audit (Wales) Act 2004,” 40
- (11) In subsection (8) for the words after paragraph (b) substitute “the references in subsections (1), (3) and (3A) to the authority’s auditor are, in respect of that financial year, references to the auditor or auditors appointed in accordance with subsection (8A).” 45



- (12) After subsection (8) insert –
- “(8A) The auditor or auditors shall be appointed –
- (a) by the Auditor General for Wales, if the authority is a best value authority in Wales;
  - (b) by the Audit Commission, in any other case. 5
- (8B) Section 14 of the Public Audit (Wales) Act 2004 shall apply to an appointment under subsection (8A)(a) as if it were an appointment of a person to audit the authority’s accounts under section 13 of that Act.”
- (13) In subsection (9) for “subsection (8)” substitute “subsection (8A)(b)”. 10
- 6 Omit section 8(1) (auditor to have regard to code of practice under section 8).
- 7 After section 8 insert –
- “8A Code of practice and fees: Auditor General for Wales**
- (1) The Auditor General for Wales may prepare, and keep under review, a code of practice prescribing the way in which auditors appointed by him are to carry out their functions under section 7. 15
  - (2) Section 16(2) to (9) of the Public Audit (Wales) Act 2004 (code of audit practice) shall have effect in relation to a code of practice under this section.
  - (3) The Auditor General for Wales shall prescribe a scale or scales of fees in respect of the audit of performance plans which are required to be audited in accordance with this Part by auditors appointed by him. 20
  - (4) Sections 20(4) to (6) and 21(1) to (4) of the Public Audit (Wales) Act 2004 (fees for audit) shall have effect in relation to fees under subsection (3). 25
  - (5) Before prescribing a scale of fees under subsection (3) the Auditor General for Wales shall consult –
    - (a) the Assembly, and
    - (b) persons appearing to the Auditor General for Wales to represent best value authorities in Wales. 30
- 8B Auditor’s duty in relation to codes**
- (1) An auditor appointed by the Audit Commission who is carrying out an audit of an authority’s performance plan under section 7 shall have regard to any provisions of a code of practice under section 8 which – 35
    - (a) are applicable to the audit, and
    - (b) are in force.
  - (2) An auditor appointed by the Auditor General for Wales who is carrying out an audit of an authority’s performance plan under section 7 shall have regard to any provisions of a code of practice under section 8A which – 40
    - (a) are applicable to the audit, and
    - (b) are in force.

- (3) Subsection (4) applies at any time before there are provisions of a code of practice under section 8A to which an auditor appointed by the Auditor General for Wales is required under subsection (2) to have regard in carrying out an audit of an authority’s performance plan under section 7. 5
- (4) The auditor shall have regard to any provisions of a code of practice under section 8 which – 10
- (a) are applicable to an audit of a performance plan published by an authority of a corresponding description to the authority, and
- (b) are in force.”
- 8 In section 10 (inspections by Audit Commission) after subsection (4) insert –
- “(5) The preceding provisions of this section do not apply in relation to a best value authority in Wales.”
- 9 After section 10 insert – 15
- “10A Inspections: Auditor General for Wales**
- (1) The Auditor General for Wales may carry out an inspection of the compliance with the requirements of this Part by a best value authority in Wales.
- (2) If the Secretary of State directs the Auditor General for Wales to carry out an inspection of the compliance with the requirements of this Part by a specified best value authority in Wales in relation to specified functions, the Auditor General for Wales shall comply with the direction. 20
- (3) Before giving a direction under subsection (2) the Secretary of State shall consult the Auditor General for Wales. 25
- (4) In carrying out an inspection, and in deciding whether to do so, the Auditor General for Wales shall have regard to – 30
- (a) any relevant recommendation under section 7(4)(ea), and
- (b) any guidance issued by the Secretary of State.”
- 10 In section 11 (inspectors’ powers and duties) for subsection (7) substitute –
- “(7) In this section “inspector” means –
- (a) an officer, servant or agent of the Audit Commission carrying out an inspection under section 10;
- (b) the Auditor General for Wales, a member of his staff or a person providing services to him who is carrying out an inspection under section 10A.” 35
- 11 In section 12 (fees in respect of inspections under section 10), in subsection (4)(b) after “authorities” insert “which may be inspected under section 10”.
- 12 After section 12 insert – 40
- “12A Fees: inspections under section 10A**
- (1) The Auditor General for Wales shall prescribe a scale or scales of fees in respect of inspections carried out under section 10A.

- 
- (2) An authority inspected under section 10A shall, subject to subsection (3), pay to the Auditor General for Wales the fee applicable to the inspection in accordance with the appropriate scale.
- (3) If it appears to the Auditor General for Wales that the work involved in a particular inspection was substantially more or less than that envisaged by the appropriate scale, the Auditor General for Wales may charge a fee which is larger or smaller than that referred to in subsection (2). 5
- (4) Before prescribing a scale of fees under this section the Auditor General for Wales shall consult – 10
- (a) the Secretary of State, and
  - (b) persons appearing to the Auditor General for Wales to represent best value authorities in Wales.”
- 13 After section 13 insert –
- “13A Reports of inspections under section 10A 15**
- (1) Where the Auditor General for Wales has carried out an inspection of an authority under section 10A he shall issue a report.
- (2) A report –
- (a) shall mention any matter in respect of which the Auditor General for Wales believes as a result of an inspection that the authority is failing to comply with the requirements of this Part, and 20
  - (b) may, if it mentions a matter under paragraph (a), recommend that the Secretary of State give a direction under section 15.
- (3) The Auditor General for Wales – 25
- (a) shall send a copy of a report to the authority concerned, and
  - (b) may publish a report and any information in respect of a report.
- (4) If a report recommends that the Secretary of State give a direction under section 15, the Auditor General for Wales shall as soon as reasonably practicable – 30
- (a) arrange for the recommendation to be published, and
  - (b) send a copy of the report to the Secretary of State.
- (5) If a report states that the Auditor General for Wales believes as a result of an inspection that an authority is failing to comply with the requirements of this Part, the next performance plan prepared by the authority under section 6 must record – 35
- (a) that fact, and
  - (b) any action taken by the authority as a result of the report.”
- 14 (1) Section 23 (regulations about accounts) is amended as follows. 40
- (2) In subsection (4) before paragraph (a) insert –
- “(za) if the regulations make provision in relation to best value authorities in Wales, the Auditor General for Wales,”.
- (3) In subsection (4)(a), at the beginning insert “if the regulations make provision in relation to other best value authorities,”. 45

- |    |   |    |
|----|---|----|
| 15 | In section 25 (coordination of inspections etc.), in subsection (2) after paragraph (a) insert—<br>“(aa) the Auditor General for Wales;”.   |    |
| 16 | In section 26 (guidance issued by Secretary of State), after subsection (3) insert—<br>“(3A) Before issuing guidance under section 10A the Secretary of State shall, in addition to the consultation required by subsection (2)(c) above, consult the Auditor General for Wales.” | 5  |
| 17 | In section 33(3) (grants by National Assembly for Wales) after “make grants to” insert “(a)” and after “this Act” insert “;<br>(b) the Auditor General for Wales in respect of expenditure incurred or to be incurred by him under this Act”.                                     | 10 |

## SCHEDULE 2

Section 66

## MINOR AND CONSEQUENTIAL AMENDMENTS

- |   |   |          |
|---|---|----------|
| <i>Local Government Act 1972 (c. 70)</i>                    |   | 15       |
| 1   | (1) Section 137 of the Local Government Act 1972 (local authority expenditure for certain purposes not otherwise authorised) is amended as follows.<br>(2) In subsection (7), omit the words from “and section 14” to the end.<br>(3) After that subsection insert—<br>“(7A) In relation to England, section 14 of the Audit Commission Act 1998 (rights of inspection) applies in relation to a separate account included in a local authority’s accounts by virtue of subsection (7) above as it applies in relation to a statement of accounts prepared by the authority pursuant to regulations under section 27 of that Act.<br>(7B) In relation to Wales, section 29 of the Public Audit (Wales) Act 2004 (rights of inspection) applies in relation to a separate account included in a local authority’s accounts by virtue of subsection (7) above as it applies in relation to a statement of accounts prepared by the authority pursuant to regulations under section 39 of that Act.” | 20<br>25 |
| <i>National Health Service Act 1977 (c. 49)</i>             |   | 30       |
| 2   | In section 98 of the National Health Service Act 1977 (accounts and audits of health bodies) after subsection (1C) insert—<br>“(1D) The second sentence of subsection (1) does not apply in relation to accounts to which section 61 of the Public Audit (Wales) Act 2004 (accounts of Welsh NHS bodies to be audited by Auditor General for Wales) applies.”   | 35       |
| <i>Local Government, Planning and Land Act 1980 (c. 65)</i> |   |          |
| 3   | In section 2(7) of the Local Government, Planning and Land Act 1980 (ways in which information may be published), in paragraph (b) after “Audit   |          |

Commission Act 1998” insert “or section 39 of the Public Audit (Wales) Act 2004”.

*Further Education Act 1985 (c. 47)*

- 4 In section 3(4) of the Further Education Act 1985 (accounting provisions: local education authorities) after “Audit Commission Act 1998” insert “or section 39 of the Public Audit (Wales) Act 2004”. 5

*Housing Associations Act 1985 (c. 69)*

- 5 (1) Section 75 of the Housing Associations Act 1985 (general functions of Relevant Authority) is amended as follows. 10
- (2) In subsection (1), omit paragraph (f).
- (3) After subsection (1) insert—
- “(1A) The Housing Corporation also has the general function of providing, on request, to such extent as the Housing Corporation considers appropriate, advice and assistance to the Audit Commission for Local Authorities and the National Health Service in England and Wales in relation to the functions of the Commission mentioned in subsection (1B). 15
- (1B) The functions referred to in subsection (1A) are the functions of the Commission under Part 1 of the Local Government Act 1999 (best value), except to the extent that those functions are exercisable in relation to best value authorities in Wales (within the meaning given in that Act).” 20

*Local Government Act 1986 (c. 10)*

- 6 In section 5 of the Local Government Act 1986 (separate account of local authority’s expenditure on publicity), in subsection (4) after “Audit Commission Act 1998” insert “, section 39(1)(e) of the Public Audit (Wales) Act 2004”. 25

*Airports Act 1986 (c. 31)*

- 7 (1) The Airports Act 1986 is amended as follows. 30
- (2) In section 22(5) (audit of accounts of public airport companies) for the words from “the Audit Commission” to the end substitute—
- “(a) the Auditor General for Wales, in a case where the company’s controlling authority are—
- (i) a county council or county borough council in Wales, or 35
- (ii) a composite authority of which both or all the constituent councils are county councils or county borough councils in Wales;
- (b) the Audit Commission for Local Authorities and the National Health Service in England and Wales, in any other case.”. 40
- (3) In section 24(3) (inspection of accounts of councils providing services for public airport companies), in paragraph (a) omit “and Wales” and after that

paragraph insert –

- “(aa) in Wales, section 29 of the Public Audit (Wales) Act 2004 (rights of inspection) shall apply in relation to any such separate account as it applies in relation to any statement of accounts prepared by the council pursuant to regulations under section 39 of that Act;”.

*Local Government Finance Act 1988 (c. 41)*

- 8 In Schedule 8 to the Local Government Finance Act 1988 (non-domestic rating: pooling), in paragraph 5 –
- (a) in sub-paragraph (6)(c) for the words from “to be certified” to the end substitute “to be certified –
- (i) if it is an authority in England, under arrangements made by the Audit Commission for Local Authorities and the National Health Service in England and Wales (“the Commission”), and
- (ii) if it is an authority in Wales, under arrangements made by the Auditor General for Wales.”; and
- (b) in sub-paragraph (6A), after “The Commission” insert “or the Auditor General for Wales, as the case may be,”.

*Education Reform Act 1988 (c. 40)*

- 9 (1) Section 124B of the Education Reform Act 1988 (accounts of higher education corporations) is amended as follows.
- (2) In subsection (5) for “The corporation” substitute “A corporation in England”.
- (3) After that subsection insert –
- “(5A) A corporation in Wales shall consult, and take into account any advice given by, the Auditor General for Wales before appointing any auditor under subsection (4) above in respect of their first financial year.”
- (4) In subsection (6) for “that subsection” substitute “subsection (4) above”.

*Local Government and Housing Act 1989 (c. 42)*

- 10 The Local Government and Housing Act 1989 is amended as follows.
- 11 In section 65(2) (certification of information supplied to Secretary of State) in paragraph (b) after “arrangements made” insert “(i) if the authority is in England,” and at the end insert –
- “(ii) if the authority is in Wales, by the Auditor General for Wales.”
- 12 (1) Section 70 (requirements for companies under control or subject to influence of local authorities) is amended as follows.
- (2) In subsection (2) after “Audit Commission Act 1998” insert “and Part 2 of the Public Audit (Wales) Act 2004”.

- (3) In subsection (4) after “Audit Commission Act 1998” insert “and Part 2 of the Public Audit (Wales) Act 2004”.
- (4) In subsection (5) after “England and Wales,” insert “or of the Auditor General for Wales,”.
- Town and Country Planning Act 1990 (c. 8)* 5
- 13 In section 2 of the Town and Country Planning Act 1990 (joint planning boards) for subsection (6A) substitute –
- “(6A) Section 241 of the Local Government Act 1972 shall be taken to authorise the application to a joint planning board, by such an order as is mentioned in subsection (6) above, of any provisions mentioned in subsection (6B) below (as well as any provisions of the Local Government Act 1972), subject to any necessary modifications. 10
- (6B) The provisions referred to in subsection (6A) above are –
- (a) the Audit Commission Act 1998, except sections 11, 12, 44 to 47 and 51; 15
- (b) Part 2 of the Public Audit (Wales) Act 2004, except sections 25, 26, 46 to 49 and 56.”
- National Health Service and Community Care Act 1990 (c. 19)*
- 14 In Schedule 2 to the National Health Service and Community Care Act 1990 (national health service trusts), in paragraph 7(2) after “Audit Commission Act 1998” insert “or section 96A of the Government of Wales Act 1998”. 20
- Social Security Administration Act 1992 (c. 5)*
- 15 (1) Section 139D of the Social Security Administration Act 1992 (directions concerning prevention and detection of fraud) is amended as follows.
- (2) In subsection (1), after paragraph (b) insert – 25
- “(ba) a copy of a report has been sent to an authority under section 22(5) or (6) of the Public Audit (Wales) Act 2004 and to the Secretary of State under section 51(3) of that Act;”.
- (3) In subsection (1)(d) after “Audit Commission Act 1998” insert “; section 45(5) of the Public Audit (Wales) Act 2004”. 30
- Health Service Commissioners Act 1993 (c. 46)*
- 16 In Schedule 1A to the Health Service Commissioners Act 1993, omit paragraph 13(5) (co-operation of Auditor General for Wales and Comptroller and Auditor General in connection with examinations in respect of the Health Service Commissioner for Wales). 35
- Education Act 1997 (c. 44)*
- 17 The Education Act 1997 is amended as follows.
- 18 In section 41 (inspections involving collaboration of Audit Commission), in subsection (1) after “inspection under section 38” insert “of a local education authority in England”. 40

19 After that section insert –

**“41A Inspections involving collaboration of Auditor General for Wales**

- (1) If requested to do so by the Chief Inspector, the Auditor General for Wales may assist with any inspection under section 38 of a local education authority in Wales; and subsections (2) to (5) below have effect where the Auditor General for Wales assists with any such inspection. 5
- (2) Section 40 shall apply to the Auditor General for Wales and to any authorised person as it applies to the inspector.
- (3) Any information obtained by virtue of section 40 by a person falling within one of the categories mentioned in subsection (4) may be disclosed for the purposes of the inspection, or the preparation or making of the report under section 39(1), to a person falling within the other category. 10
- (4) Those categories are – 15
- (a) the Auditor General for Wales and any authorised person; and
- (b) the inspector and any person assisting him.
- (5) Any report prepared under section 39(1) shall be prepared by the inspector acting in conjunction with the Auditor General for Wales. 20
- (6) The Auditor General for Wales shall not provide assistance under this section unless, before he does so, the Chief Inspector has agreed to pay the Auditor General for Wales an amount equal to the full costs incurred by the Auditor General for Wales in providing the assistance. 25
- (7) In this section “authorised person” means a person authorised by the Auditor General for Wales for the purposes of this section.”

*Local Government (Contracts) Act 1997 (c. 65)*

- 20 In section 8(1) of the Local Government (Contracts) Act 1997 (meaning of “audit review”) – 30
- (a) in paragraph (a) after “Audit Commission Act 1998” insert “or section 32 of the Public Audit (Wales) Act 2004”;
- (b) in paragraph (b) for “that Act” substitute “the Audit Commission Act 1998”.

*Audit Commission Act 1998 (c. 18)* 35

- 21 The Audit Commission Act 1998 is amended as follows.
- 22 In section 29 (agreed audit of accounts), in subsection (1)(b) after “body subject to audit” insert “, a local government body in Wales or a Welsh NHS body”.
- 23 (1) Section 33 (studies for improving economy etc in services) is amended as follows. 40
- (2) In subsection (1)(a) –



- (a) after “best value authorities” insert “which are bodies subject to audit”;
  - (b) after “bodies subject to audit” insert “and by local government bodies in Wales”.
- (3) In subsection (1)(b) after “bodies subject to audit” insert “and local government bodies in Wales”. 5
- (4) In subsection (4) after “bodies subject to audit” insert “and by local government bodies in Wales”.
- (5) In subsection (6)(a) for “best value authorities or other bodies subject to audit” substitute “best value authorities which are bodies subject to audit, other bodies subject to audit and local government bodies in Wales”. 10
- (6) In subsection (6) omit the word “and” immediately preceding paragraph (c) and after that paragraph insert—
  - “(ca) in the case of a study relating to a local government body in Wales, also consult the Auditor General for Wales and take into account any relevant work done or being done by the Auditor General for Wales.” 15
- (7) After subsection (6) insert—
  - “(6A) The Commission may undertake or promote studies under this section relating to a local government body in Wales only if the Commission considers it necessary or desirable to do so for the purposes of any of these—
    - (a) a study into the exercise throughout England and Wales of particular functions of all local government bodies or a description of local government body; 25
    - (b) a study into the provision throughout England and Wales of particular services provided by all local government bodies or a description of local government body;
    - (c) a study into the financial or other management throughout England and Wales of all local government bodies or a description of local government body.” 30
- 24 (1) Section 34 (reports on impact of statutory provisions etc) is amended as follows.
- (2) In subsection (1)—
  - (a) after “local authority services” insert “by bodies subject to audit and local government bodies in Wales”; 35
  - (b) after “health service bodies” insert “and by local government bodies in Wales”;
  - (c) for “such bodies” substitute “bodies subject to audit and local government bodies in Wales”. 40
- (3) In subsection (6) omit the word “and” immediately preceding paragraph (d) and after that paragraph insert—
  - “(da) in the case of a study relating to a local government body in Wales, also consult the Auditor General for Wales and take account of any relevant work done or being done by the Auditor General for Wales.” 45

- (4) After subsection (6) insert—
- “(6A) The Commission may undertake or promote studies under this section relating to a local government body in Wales only if the Commission considers it necessary or desirable to do so for the purposes of any of these—
- (a) a study into the impact of anything mentioned in paragraph (a) or (b) of subsection (1) on economy, efficiency and effectiveness in the provision of local authority services throughout England and Wales by all local government bodies or a description of local government body;
  - (b) a study into the impact of anything mentioned in paragraph (a) or (b) of subsection (1) on economy, efficiency and effectiveness in the provision of other services throughout England and Wales by all local government bodies or a description of local government body;
  - (c) a study into the impact of anything mentioned in paragraph (a) or (b) of subsection (1) on the financial management throughout England and Wales of all local government bodies or a description of local government body.”
- 25 (1) Section 36 (studies at request of educational bodies) is amended as follows. 20
- (2) In the Table in subsection (1)—
- (a) in the entry relating to a higher education funding council, for “A higher education funding council” substitute “The Higher Education Funding Council for England”;
  - (b) in the entry relating to the governing body of an institution within the higher education sector—
    - (i) after “institution” insert “in England”;
    - (ii) for “higher education funding council” substitute “Higher Education Funding Council for England”;
  - (c) in the entry relating to a funding agency under Part 1 of the Education Act 1994, after “Education Act 1994” insert “in England”;
  - (d) in the entry relating to the governing body of an institution receiving financial support under Part 1 of the Education Act 1994, after “institution” insert “in England”;
  - (e) omit the entry relating to the National Council for Education and Training for Wales;
  - (f) in the entry relating to the governing body of an institution within the further education sector—
    - (i) after “institution” insert “in England”;
    - (ii) for “the Learning and Skills Council for England or the National Council for Education and Training for Wales” substitute “or the Learning and Skills Council for England”.
- (3) In subsection (2) for “a higher education funding council” substitute “the Higher Education Funding Council for England”.
- (4) In subsection (3) after “further education corporation” insert “in England”.
- 26 In section 38 (benefit administration studies for Secretary of State) after

- subsection (1) insert –
- “(1A) The Secretary of State may not exercise the power conferred by subsection (1) in relation to a county council, county borough council or community council in Wales.”
- 27 (1) Section 40 (studies relating to registered social landlords) is amended as follows. 5
- (2) In subsection (1) –
- (a) for “Relevant Authority” substitute “Housing Corporation”;
- (b) after “registered social landlords” insert “(other than registered social landlords in Wales)”. 10
- (3) Omit subsection (2A).
- (4) In subsection (4) for “Relevant Authority” substitute “Housing Corporation”.
- (5) In subsection (6) for “Relevant Authority” (in both places) substitute “Housing Corporation”. 15
- 28 (1) Section 41 (provisions supplementary to section 40) is amended as follows.
- (2) In subsection (1) for “Relevant Authority” substitute “Housing Corporation”.
- (3) In subsection (4) for “Relevant Authority” substitute “Housing Corporation”. 20
- 29 (1) Section 41A (inspections of registered social landlords) is amended as follows.
- (2) After subsection (1) insert –
- “(1A) The Commission may not carry out an inspection under subsection (1) in relation to a registered social landlord in Wales.” 25
- (3) In subsection (3) for “Relevant Authority” substitute “Housing Corporation”.
- (4) In subsection (4)(a) for “Relevant Authority” substitute “Housing Corporation”.
- (5) In subsection (6) for “Relevant Authority” substitute “Housing Corporation”. 30
- 30 (1) Section 41B (fees for inspections under section 41A) is amended as follows.
- (2) In subsection (1) for “appropriate person” (in both places) substitute “Secretary of State”.
- (3) Omit subsections (2), (4) and (6). 35
- (4) In subsection (5) omit “made by the Secretary of State”.
- 31 In section 43 (sections 40 to 42: interpretation) –
- (a) after “In” insert “this section and”;
- (b) after “Housing Act 1996” insert “and “registered social landlord in Wales” means a registered social landlord which is mentioned in any of paragraphs (a) to (c) of section 56(2) of that Act”. 40
- 32 In section 47 (application of performance standards provisions to parish and community councils and charter trustees) –

- (a) for the heading substitute “Application to parish councils and charter trustees”;
- (b) in subsection (1)(a) omit the words “and community” and “and Wales”.
- 33 In section 49(1) (restriction on disclosure of information) after paragraph (d) insert – 5
- “(da) for the purposes of any function of the Auditor General for Wales under the Public Audit (Wales) Act 2004 or (in relation to a health service body) under the Government of Wales Act 1998;”. 10
- 34 After section 51 insert –
- “51A Co-operation with the Auditor General for Wales**
- The Commission must co-operate with the Auditor General for Wales where it seems to it appropriate to do so for the efficient and effective discharge of – 15
- (a) its functions under sections 33 and 34, or
- (b) its functions in relation to bodies mentioned in paragraph 1(g) of Schedule 2.
- 51B Provision of information to Auditor General for Wales**
- The Commission must, on request, provide the Auditor General for Wales with any information he may reasonably require for the purpose of making comparisons, in the discharge of his functions under sections 41 and 42 of the Public Audit (Wales) Act 2004, between local government bodies in Wales and other local government bodies.” 20
- 35 In section 52(1) (orders and regulations) omit “or the National Assembly for Wales”. 25
- 36 In section 53(1) (interpretation) at the appropriate places insert –
- ““local government body” means a body mentioned in paragraph 1 of Schedule 2, other than one mentioned in paragraph (g) of that paragraph;”;
- 30
- ““local government body in Wales” has the meaning given in section 12(1) of the Public Audit (Wales) Act 2004;”;
- ““Welsh NHS body” has the meaning given in section 60 of the Public Audit (Wales) Act 2004;”. 35
- 37 In paragraph 8A of Schedule 1 (grants in respect of inspections under section 41A) for the words from “Each of” to “National Assembly for Wales” substitute “The Secretary of State”.
- 38 (1) Schedule 2 (accounts subject to audit) is amended as follows.
- (2) In paragraph 1(g) after “1977” insert “, other than a Welsh NHS body”. 40
- (3) After paragraph 1A insert –
- “1B Section 2 does not apply to the accounts of a local government body in Wales.”

*School Standards and Framework Act 1998 (c. 31)*

- 39 The School Standards and Framework Act 1998 is amended as follows.
- 40 In section 53 (certification of statements by Audit Commission), in subsection (1) after “local education authority” insert “in England”.
- 41 After that section insert – 5

**“53A Certification of statements by Auditor General for Wales**

- (1) A local education authority in Wales shall, if directed to do so by the National Assembly for Wales, require the Auditor General for Wales to make arrangements in accordance with section 96B(1)(d) of the Government of Wales Act 1998 for certifying – 10
- (a) such statement or statements prepared by the authority under section 52 above, or
- (b) such part or parts of any such statement or statements, as may be specified in the directions; and for the purposes of section 96B(1)(d) of that Act any statement under section 52 above shall be regarded as a return by the authority. 15
- (2) The arrangements made by the Auditor General for Wales in pursuance of subsection (1) shall include arrangements for sending to the National Assembly for Wales – 20
- (a) a copy of the statement or statements so certified, or
- (b) a copy of the part or parts so certified, as the case may be.
- (3) Directions given under subsection (1) may relate to any local education authority or to local education authorities generally or to any class or description of such authority.” 25

*Government of Wales Act 1998 (c. 38)*

- 42 The Government of Wales Act 1998 is amended as follows.
- 43 After section 41 insert –
- “41A Co-operation with the Auditor General for Wales**
- The Assembly must co-operate with the Auditor General for Wales where it seems to the Assembly appropriate to do so for the efficient and effective discharge of its functions in relation to Welsh NHS bodies (within the meaning given in section 60 of the Public Audit (Wales) Act 2004).” 30
- 44 Omit section 100(6) (co-operation of Auditor General for Wales and Comptroller and Auditor General with respect to examinations into Assembly’s use of resources etc.). 35
- 45 In section 101 (examinations into finances of Assembly by Comptroller and Auditor General), after subsection (1) insert –
- “(1A) But subsection (1) does not apply in relation to any document in the custody or under the control of a Welsh NHS body (within the meaning given in section 60 of the Public Audit (Wales) Act 2004).” 40

- 46 In section 144 (accounts, audit and reports), in subsection (2) for “subject to audit by auditors appointed by the Audit Commission)” substitute “and audit of NHS bodies)”.
- 47 (1) Section 145 (examination into use of resources) is amended as follows. 5  
(2) Omit subsection (5).  
(3) At the end of that section insert –  
    “(7) This section is without prejudice to the power conferred on the Auditor General for Wales by section 96(3)(b).”
- 48 In Schedule 6, omit paragraph 8(5) (co-operation of Auditor General for Wales and Comptroller and Auditor General in connection with examinations in respect of Her Majesty’s Chief Inspector of Education and Training in Wales). 10
- 49 In Schedule 7, omit paragraph 8(5) (co-operation of Auditor General for Wales and Comptroller and Auditor General in connection with examinations in respect of the Forestry Commissioners). 15
- 50 In Schedule 9, omit paragraph 12(5) (co-operation of Auditor General for Wales and Comptroller and Auditor General in connection with examinations in respect of the Welsh Administration Ombudsman).
- 51 In Schedule 17, in Part 2 (bodies partially subject to audit etc provisions), after paragraph 14 insert – 20  
    “14A. A body of trustees appointed in pursuance of section 29(1) of the National Health Service Reorganisation Act 1973 and section 95(1) of the National Health Service Act 1977 for a trust all or most of whose hospitals, establishments and facilities are situated in Wales.” 25

*Local Government Act 2000 (c. 22)*

- 52 The Local Government Act 2000 is amended as follows.
- 53 (1) Section 49 (principles governing conduct of members of relevant authorities) is amended as follows. 30  
(2) In subsection (4) after paragraph (a) insert –  
    “(aa) the Auditor General for Wales,”.  
(3) In subsection (5)(b) for “Audit Commission” substitute “Auditor General for Wales”.
- 54 In section 63 (restrictions on disclosure of information), in subsection (1) after paragraph (e) insert – 35  
    “(f) the disclosure is made to the Auditor General for Wales for the purposes of any functions of the Auditor General for Wales or an auditor under Part 2 of the Public Audit (Wales) Act 2004”.
- 55 (1) Section 82 (code of conduct for local government employees) is amended as follows. 40  
(2) In subsection (5) after paragraph (a) insert –  
    “(aa) the Auditor General for Wales,”.

- (3) In subsection (6)(b) for “Audit Commission” substitute “Auditor General for Wales”.

*Health (Wales) Act 2003 (c. 4)*

- 56 In Schedule 2 to the Health (Wales) Act 2003, omit paragraph 25(4) (co-operation of Auditor General for Wales and Comptroller and Auditor General with respect to examinations in respect of the Wales Centre for Health). 5

*Health and Social Care (Community Health and Standards) Act 2003 (c. 43)*

- 57 The Health and Social Care (Community Health and Standards) Act 2003 is amended as follows. 10

- 58 In section 60 (provision of material to Comptroller and Auditor General etc), after subsection (1) insert –

“(1A) The CHAI must also, on request, provide the Auditor General for Wales with all material which is relevant to a review under section 51 and to one or more Welsh NHS bodies.” 15

- 59 After section 69 insert –

**“69A Provision of information by Auditor General for Wales**

The Auditor General for Wales must, on request, provide the CHAI with any information it may reasonably require for the purpose of making comparisons, in the exercise of its functions under sections 51, 52 and 57, between English NHS bodies and Welsh NHS bodies.” 20

- 60 In section 70 (reviews and investigations by the Assembly relating to provision of health care), after subsection (3) insert –

“(3A) Before conducting a review under this section the Assembly must –  
(a) consult the Auditor General for Wales, and 25  
(b) take into account any relevant work done or being done by the Auditor General for Wales.”

- 61 After section 145 insert –

**“145A Duties in connection with the Auditor General for Wales**

- (1) The CHAI must co-operate with the Auditor General for Wales where it seems to it appropriate to do so for the efficient and effective discharge of its functions. 30

- (2) The CHAI must also –  
(a) consult the Auditor General for Wales, and  
(b) take into account any relevant work done or being done by the Auditor General for Wales, 35  
before exercising its functions under section 51 in relation to a Welsh NHS body.

- (3) Subsection (2) does not apply in the case of a review requested by the Secretary of State under section 51(2).” 40

## SCHEDULE 3

Section 68

## TRANSFER SCHEMES

*Preparation of transfer schemes*

- 1 (1) The Secretary of State may, with the consent of the Assembly, by order –
  - (a) make one or more schemes for the transfer to the Auditor General for Wales of defined property, rights and liabilities of the Comptroller and Auditor General, and 5
  - (b) make one or more schemes for the transfer to the Auditor General for Wales of defined property, rights and liabilities of the Audit Commission. 10
- (2) The property, rights and liabilities which may be the subject of a scheme include –
  - (a) any that would otherwise be incapable of being transferred or assigned, and
  - (b) rights and liabilities under a contract of employment. 15
- (3) For the purpose of dividing any property, rights or liabilities in connection with a scheme, the scheme may –
  - (a) create in favour of the transferor an interest in, or right over, any property transferred in accordance with the scheme;
  - (b) create in favour of the Auditor General for Wales an interest in, or right over, any property retained by the transferor; 20
  - (c) create new rights and liabilities as between the Auditor General for Wales and the transferor; or
  - (d) in connection with provision made under paragraph (a), (b) or (c), make incidental provision as to the interests, rights and liabilities of persons other than the transferor and the Auditor General for Wales with respect to the subject-matter of the scheme; 25

and references in this Schedule (other than this sub-paragraph) or section 68 to the transfer of property, rights or liabilities (so far as relating to transfers provided for in a scheme) are accordingly to be construed as including references to the creation of any interests, rights or liabilities by virtue of paragraph (a), (b) or (c) or the making of provision by virtue of paragraph (d). 30
- (4) A scheme may define the property, rights and liabilities to be transferred by specifying or describing them (including describing them by reference to a specified part of the transferor's undertaking). 35
- (5) A scheme may include supplementary, incidental, transitional and consequential provision.
- (6) The provision that may be made by virtue of sub-paragraph (3)(c) includes – 40
  - (a) provision for treating any person who is entitled by virtue of an order under this paragraph to possession of a document as having given another person an acknowledgement in writing of the right of that other person to the production of the document and to delivery of copies of it, and 45
  - (b) provision applying section 64 of the Law of Property Act 1925 (c. 20) (production and safe custody of documents) in relation to any case in relation to which provision within sub-paragraph (3)(a) has effect.



- (7) Sub-paragraph (8) applies in the case of a scheme which contains provision for the transfer of rights or liabilities under the contract of employment of an individual (“the employee”).
- (8) The provision that may be made in the scheme by virtue of sub-paragraph (5) includes provision with respect to – 5
- (a) the employee’s eligibility to become a member of any pension scheme by virtue of his employment with the transferee if the rights or liabilities relating to his contract of employment are transferred in accordance with the scheme, and
  - (b) rights of, or rights or liabilities in respect of, the employee under – 10
    - (i) any pension scheme of which he may become a member by virtue of his employment with the transferee, or
    - (ii) any pension scheme of which he is a member by virtue of his employment immediately before the transfer,
- (and for the purposes of this sub-paragraph “pension scheme” includes any scheme made under section 1 of the Superannuation Act 1972 (c. 11) (superannuation schemes as respects civil servants etc)). 15
- (9) The power to make an order under this paragraph is exercisable by statutory instrument, and any such instrument is subject to annulment in pursuance of a resolution of either House of Parliament. 20
- 2 Before making an order under paragraph 1, the Secretary of State must consult –
- (a) the Auditor General for Wales,
  - (b) in the case of an order containing a scheme within paragraph 1(1)(a), the Comptroller and Auditor General, and 25
  - (c) in the case of an order containing a scheme within paragraph 1(1)(b), the Audit Commission.

*Transfer of employees*

- 3 (1) This paragraph has effect in any case where the rights and liabilities relating to an individual’s contract of employment are transferred in accordance with a scheme. 30
- (2) The transfer does not break the continuity of the individual’s employment, and accordingly –
- (a) he is not to be regarded for the purposes of Part 11 of the Employment Rights Act 1996 (c. 18) (redundancy) as having been dismissed by virtue of the transfer, 35
  - (b) his period of employment with the transferor counts as a period of employment with the transferee for the purposes of that Act.
- (3) The terms and conditions of the individual’s employment with the transferee (taken as a whole) must not be less favourable to the individual than the terms and conditions on which he is employed immediately before the transfer. 40
- 4 (1) This paragraph has effect in any case where –
- (a) a scheme contains provision for the transfer of rights or liabilities under the contract of employment of any individual (“the employee”), but 45

- (b) the employee informs the transferor or the Auditor General for Wales that he objects to becoming employed by the Auditor General for Wales.
- (2) Section 68 –
- (a) does not operate to transfer any rights, powers, duties or liabilities under or in connection with the contract of employment, but
- (b) operates to terminate that contract on the day preceding the transfer date.
- (3) The employee is not, by virtue of that termination, to be treated for any purpose as having been dismissed.
- (4) In this paragraph “the transfer date”, in relation to a scheme, means the date on which (but for this paragraph) any rights, powers, duties or liabilities under the employee’s contract of employment would have been transferred in accordance with the scheme.
- Continuity*
- 5 (1) Anything done by or in relation to the transferor for the purposes of or in connection with anything transferred by section 68 which is in effect immediately before it is transferred is to be treated as if done by or in relation to the Auditor General for Wales.
- (2) There may be continued by or in relation to the Auditor General for Wales anything (including legal proceedings) relating to anything so transferred which is in the process of being done by or in relation to the transferor immediately before it is transferred.
- (3) A reference to the transferor in any document relating to anything so transferred is to be taken (so far as necessary for the purposes of or in consequence of the transfer) as a reference to the Auditor General for Wales.
- (4) A transfer under section 68 does not affect the validity of anything done by or in relation to the transferor before the transfer takes effect.

## SCHEDULE 4

Section 72

## REPEALS

30

<i>Short title and chapter</i>	<i>Extent of repeal</i>	
Local Government Act 1972 (c. 70)	In section 137(7) the words from “and section 14” to the end.	
Housing Associations Act 1985 (c. 69)	Section 75(1)(f).	35
Airports Act 1986 (c. 31)	In section 24(3)(a) the words “and Wales”.	
Health Service Commissioners Act 1993 (c. 46)	In Schedule 1A, paragraph 13(5).	

<i>Short title and chapter</i>	<i>Extent of repeal</i>	
Audit Commission Act 1998 (c. 18)	In section 33(6), the word “and” immediately preceding paragraph (c). In section 34(6), the word “and” immediately preceding paragraph (d). In section 36(1), in the Table, the entry relating to the National Council for Education and Training for Wales. Section 40(2A). Section 41B—	5
	(a) subsections (2), (4) and (6), (b) in subsection (5), the words “made by the Secretary of State”. In section 47(1)(a), the words “and community” and “and Wales”. In section 52(1), the words “or the National Assembly for Wales”.	10 15
Government of Wales Act 1998 (c. 38)	In section 92— (a) subsection (1), (b) in subsection (2), the words “, having regard to any arrangements made or capable of being made under subsection (1),”, (c) subsection (3). Section 93(3). Section 100(6). In section 144(9), the word “and” immediately preceding paragraph (b). Section 145(5). In Schedule 6, paragraph 8(5). In Schedule 7, paragraph 8(5). In Schedule 9, paragraph 12(5). In Schedule 16, paragraph 99(4). In Schedule 17, in paragraph 1, the words “(other than the Care Council for Wales)”.	20 25 30 35
Local Government Act 1999 (c. 27)	Section 8(1). Section 22(7).	
Care Standards Act 2000 (c. 14)	In Schedule 1, in paragraph 27, sub-paragraph (d) and the word “and” immediately preceding it.	40
Health (Wales) Act 2003 (c. 4)	In Schedule 2, paragraph 25(4).	
Local Government Act 2003 (c. 26)	Section 109(2).	

# Public Audit (Wales) Bill [HL]

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## B I L L

[AS AMENDED IN STANDING COMMITTEE D]

To confer further functions on the Auditor General for Wales; to make provision about the audit of accounts of public bodies in Wales and related matters; to make provision about economy, efficiency and effectiveness in relation to public bodies and registered social landlords in Wales; and for connected purposes.

*Brought from the Lords 12th May 2004.*

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