

REGULATORY APPRAISAL

PUBLIC AUDIT, ENGLAND AND WALES

THE PUBLIC AUDIT (WALES) ACT 2004 (COMMENCEMENT NO. 2 AND TRANSITIONAL PROVISIONS AND SAVINGS) ORDER 2005.

Introduction

1. The Public Audit (Wales) Act 2004 confers additional functions on the Auditor General for Wales: primarily those currently exercised by the Audit Commission in Wales. The effect of the Act is that there will be, subject to commencement of the Act's provisions, a single public audit body for Wales to be headed by the Auditor General and to be known as the Wales Audit Office/Y Swyddfa Archwilio Cymru.

Background

2. The Act was the subject of pre-legislative scrutiny and public consultation at Bill stage, before its introduction to Parliament in November 2003. The provisions of the draft Bill were scrutinised by an ad hoc Committee of the Assembly (headed by the Chair of the Audit Committee) and debated by the Assembly in Plenary on 24 September 2003.
3. The Public Audit (Wales) Act 2004 (Commencement Order No.1) was approved by the Assembly on 18 January and came into force on 31 January 2005. It enables a number of aspects of the new arrangements, that need to be in place before 1 April 2005, to be addressed. The Public Audit (Wales) Act 2004 (Commencement Order No.2 and Transitional Provisions and Savings) Order 2005 commences the remainder of the Act's provisions with the exception of section 54 (which will be the subject of a further Commencement Order).
4. The enhanced statutory functions of the Auditor General for Wales relate to public bodies within Wales (i.e. the National Assembly for Wales; its sponsored bodies and other public bodies that it funds; local government bodies in Wales; and National Health Service Bodies in Wales).

Options

Option 1 – Do Nothing

5. The objective of implementing the new unitary public audit arrangements for Wales, for which the Act provides and to which end the National Assembly; the National Audit Office and the Audit Commission have been working since the Act received Royal Assent in September 2004, will not be met.

Option 2 – Make this Legislation

6. Section 73 of the Act provides for the National Assembly to commence the Act's provisions by order. Section 73 (3) enables the Order to make transitional provisions or savings. The Commencement Order is the means by which the new unitary public audit arrangements (that the National Assembly welcome) can be put in place from 1 April 2005.

Benefits

Option 1 – Do Nothing

7. There are no benefits from not implementing this Order. It would frustrate the purpose of the Act .

Option 2 – Make this Legislation

8. The Regulatory Impact Assessment, prepared for the Public Audit (Wales) Bill's introduction to Parliament, identified the following potential benefits: -

- a single public audit body would be consistent with and complement the National Assembly's emphasis on cross-cutting themes in the development of policy and a cross-sector partnership approach to delivery, that can produce complex accountability arrangements;
- a reduction in organisational bodies that would also foster a more holistic approach to value for money work in the Welsh public sector;
- an end to the confusion and duality in respect of the respective audit responsibilities of the Audit Commission and the Auditor General for Wales in respect of the health sector; and
- potential over the longer term for the new arrangements to provide opportunities for cost savings: through the potential to rationalise accommodation needs and efficiency savings from a more integrated approach to the conduct of Value for Money programmes.

9. These benefits remain relevant.

Costs

10. The Act does not impact upon business or the voluntary sector. With regard to local government, Part 2 of the Act largely replicates provisions in the Audit Commission Act 1998 and makes the Auditor General for Wales responsible, from 1 April 2005, for functions of the Audit Commission in respect of "Best Value" legislation (known in Wales as the "Wales Programme for Improvement") under Part 1 of the Local Government Act 1999. Best value authorities are under a duty to make arrangements to secure continuous improvement in the way in which its functions are exercised. It does not result in any material increase in costs for local government.

11. The Commencement Order saves the following provisions of the Audit Commission Act 1998:-

- the Assembly's power to prepare accounts and audit regulations under section 27 of the Act, in case it becomes necessary to make revised regulations relating to local government body accounts not yet closed, for a financial year before 1 April 2005; and
- the preservation of a local elector's right to pursue an objection in respect of the accounts of a local government body relating to a financial year before 1 April 2005.

12. Both of these saving provisions preserve existing functions and rights under the Audit Commission Act 1998 on a "failsafe" basis. They do not add to the administrative or financial burden on local government bodies. Local government body accounts for financial years after 1 April 2005 will be prepared and maintained in accordance with account and audit regulations prepared under section 39 of the Public Audit (Wales) Act 2004. A local government elector's right to make objections at the audit of accounts relating to a financial year after 1 April 2005 is provided for in section 31 of the 2004 Act.

13. There are no financial implications to the Assembly, local authorities or others resulting from the implementation of this Order. The Auditor General's annual estimate of income and expenditure for 2005-06, that he is required to submit to the National Assembly Audit Committee by virtue of section 93 of the Government of Wales Act 1998, was approved by the Committee on 30 September 2004 and included in the National Assembly's 2005-06 Budget approved by the Assembly in Plenary on 30 November 2004. The Auditor General's function, under section 20 of the Public Audit (Wales) Act 2004, to consult on and put in place a scale of fees for local government audit and inspection is currently exercised by the Audit Commission in Wales, under section 7(1) of the Audit Commission Act 1998. The Assembly function, under section 21 of the Public Audit (Wales) Act 2004, to set a scale of fees to replace those prescribed by the Auditor General on a failsafe basis is currently vested in the Assembly under section 7(8) and (9) of the Audit Commission Act.

Consultation

With Stakeholders

14. The draft Public Audit (Wales) Bill was published for public consultation and pre-legislative scrutiny on 3 April 2003. Public consultation extended for a 12 week period, ending on 27 June 2003. Over 200 organisations were consulted and 15 responses were received. Respondents included: the Auditor General for Wales; the Welsh Local Government Association; the Audit Commission; the Comptroller and Auditor General; and a number of

local authorities and accountancy bodies. The Bill was also subject to pre-legislative scrutiny by the Welsh Affairs Select Committee whose report was debated by the Welsh Grand Committee on 15 July 2003. In all, 41 recommendations for change or clarification were made. Of these 19 were accepted. They improve consistency of practice between non-local government and local government audit arrangements; strengthen the ability of audit and regulatory bodies to co-operate; and enhance and align auditors powers of access to documents and information across the public sector in Wales.

With Subject Committee

15. The Bill was also subject to pre-legislative scrutiny by an ad hoc Assembly Scrutiny Committee (comprised primarily of Assembly Audit Committee members). The Minister for Finance, Local Government and Public Services presented the draft Bill to the Public Audit (Wales) Bill Committee on 8 July 2003. The Committee also heard oral submissions on 8 and 10 July 2003 from the Welsh Local Government Association; the Auditor General for Wales; the Audit Commission in Wales; the Director of NHS Wales and representatives of the trade unions. The Committee made 12 recommendations. Its report and recommendations were noted by the Assembly in a Plenary debate on 24 September 2003. The Assembly also endorsed the intention, of the Minister for Finance, Local Government and Public Services, to continue discussions with the Secretary of State for Wales about securing an early legislative opportunity to introduce the Bill.

16. The majority of the initial Scrutiny Committee recommendations were accepted by the U.K. Government. A number were incorporated into the published Bill. Others were accepted in principle but were considered more appropriate to be dealt with off the face of the Bill in related secondary legislation.

17. Three recommendations of the Committee were not accepted by the U.K. Government. These were that:-

- Clause (now section) 54, which incorporates a presumption against disclosure of information obtained during the course of a local government audit except in specified circumstances, be deleted from the Bill;
- As a matter of general principle the Bill and all other primary legislation be gender neutral in terminology; and
- Statutory provision should be made for the Auditor General for Wales to be appointed after consultation with the National Assembly. The amendment should include the provision that the Assembly debate the appointment.

18. A further ad hoc Assembly Scrutiny Committee was convened to consider the published Bill introduced to Parliament in November 2003. The Public Audit (Wales) Bill Committee 2004 met on 22 January 2004 and its report and recommendations were considered by the Assembly in Plenary on 4 February 2004. The Committee welcomed the introduction of the Bill, but expressed disappointment that the three recommendations set out above from the initial Committee's report had not been accepted. It re-affirmed the recommendations. The Assembly also welcomed the introduction of the Bill and called upon the Welsh Assembly Government to put the Committee's recommended amendments to the U.K. Government.
19. The U.K. Government's view remained that clause 54 should be retained in order to maintain consistency in the application of the criminal law in England and Wales. An amendment was made to clause 54 during the Bill's passage, however, to enable the provision to be amended after enactment to bring it within the spirit of the Freedom of information Act 2000. The U.K. Government was also of the view that a statutory provision relating to consultation on the appointment of the Auditor General was not needed as in practice consultation does take place. It also confirmed that it is a matter of Parliamentary convention to use the male gender in Parliamentary Bills.

Review

20. The Order is required on a one-off basis to commence the provisions of the Public Audit (Wales) Act 2004. The fail-safe savings provisions described in paragraph 11 above will cease to be relevant when local government body accounts for a financial year before 1 April 2005 are closed.

Summary

21. The making of the Order including the two saving provisions imposes no additional cost. The Order is consistent with section 73 of the Act that gives the Assembly order making powers to commence its provisions. It is the only way to ensure that the new unitary audit arrangements are introduced from 1 April 2005.