

## **Explanatory Memorandum to the Audit and Assessment Reports (Wales) Order 2010.**

This Explanatory Memorandum has been prepared by Local Government Policy Division and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 24.1.

### **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Audit and Assessment Reports (Wales) Order 2010.

*Carl Sargeant AM*

29 November 2010

## **1. Description**

The Local Government (Wales) Measure 2009 requires the Auditor General for Wales to produce an audit and assessment report for each Welsh improvement authority and to send copies of these reports to Welsh Ministers and Welsh improvement authorities by 30<sup>th</sup> November each year.

## **2. Matters of special interest to the Constitutional Affairs Committee**

The 21-day rule has not been complied with in the making of this Order. The Minister for Business and Budget has written to the Presiding Officer notifying him of the reasons pertinent to the breach.

The Order should follow the negative resolution procedure. This means that it is should not normally be brought into force until at least 21 (calendar) days from the date it is made and laid before the National Assembly for Wales.

However, in order to amend the date of 30 November, which is specified in section 19(3)(a) of the Measure as the date by which the Auditor General for Wales must produce his report, it is necessary to breach the 21 day rule. Failure to do so would mean that the Auditor General for Wales would breach his statutory duty to produce a report by 30 November and any report produced by the Auditor General for Wales thereafter could be subject to challenge. As you are aware the Welsh Ministers rely on the Auditor General's reports to take any consequential action against a Welsh improvement authority if the authority is considered to be failing to meet its duties under the Measure. It is therefore essential that the validity of a report issued by the Auditor General is not questionable.

The Minister for Social Justice and Local Government has further determined in this particular circumstance that it is not reasonable or practicable for the order to be made in English and Welsh.

## **3. Legislative background**

The Audit and Assessment Reports (Wales) Order 2010 is made under section 19(3)(b) of the Measure.

Section 19(3)(b) of the Measure gives the Welsh Ministers the power to, by order, amend the date by which copies of an audit and assessment report in respect of a Welsh improvement authority, must be sent to the Welsh Ministers and the Welsh improvement authority concerned.

The Order is subject to the negative procedure for statutory instruments.

#### **4. Purpose & intended effect of the legislation**

Section 19 of the Local Government (Wales) Measure 2009 (“the Measure”) requires the Auditor General for Wales to issue an audit and assessment report in respect of a Welsh improvement authority (Welsh improvement authorities include all local authorities, National Park authorities and fire and rescue authorities in Wales). Sections 19(2) and 19(3) of the Measure require the Auditor General for Wales to send copies of the audit and assessment reports to the Welsh Ministers and the Welsh improvement authority concerned by 30<sup>th</sup> November each year.

The Auditor General for Wales has written to the Minister for Social Justice and Local Government to request that the Minister uses his powers under section 19(3)(b) of the Measure to change the date by which he must send his audit and assessment reports to Welsh improvement authorities and the Welsh Ministers to 31<sup>st</sup> January 2011 for this year only.

The reasons for the Auditor General’s request are two-fold:

- First, this is the first year of the new improvement regime as established by the Measure and some Welsh improvement authorities have been slow to publish their improvement objectives for the year. This has inevitably caused a delay in the Auditor General’s ability to assess them;
- Secondly, this is the first year that CSSIW will publish their letters to directors of social services having reviewed the directors’ own self assessments of their services. However, these letters may not be available in time for the Auditor General to include the findings in his reports in the requirement for them to be published by 30 November remains.

The Auditor General for Wales’ request to delay the date for sending his audit and assessment reports so that they may include CSSIW assessment of social services is reasonable. Under the provisions of the Measure the Auditor General has a duty to take account of the work of relevant regulators and it would amount to a serious omission from his reports if the findings of CSSIW were omitted from them.

It is in the public interest that the Auditor General’s audit and assessment reports are as comprehensive as possible. All Welsh improvement authorities, and local authorities in particular, provide vital services that all the citizens of Wales rely on every day. That they are subject to external scrutiny of both their financial stewardship and the services they provide is a vital component of their public accountability. In changing the date that the audit and assessment reports are published the Auditor General is able to draw on the inspection work of CSSIW in reaching conclusions about the corporate health of the organisation and the social care services that local authorities provide to the most vulnerable members of society.

Changing the date of the publication of the audit and assessment reports will have no financial consequences for Welsh improvement authorities, the Wales Audit Office or for any other public or private body.

If the Audit and Assessment Reports (Wales) Order 2010 is not made then the Auditor General for Wales will breach his statutory duty to produce a report by 30<sup>th</sup> November 2010.

The Minister for Social Justice and Local Government is of the opinion that the public interest is best served by delaying the publication of the Auditor General's reports by two months for this year only.

## **5. Consultation**

While no formal consultation has taken place officials from the Wales Audit Office and the Assembly Government's Local Government Policy Division have spoken to officers from local authorities about the intention to change the date when the Auditor General should send his audit and assessment reports to Welsh improvement authorities and all have been content with the proposal as the change will have very little impact upon them.

## **6. Regulatory Impact Assessment (RIA)**

### **Please Note:**

A Regulatory Impact Assessment has not been conducted. The Audit and Assessment Reports (Wales) Order 2010 imposes no costs or savings on the public, private or charities and voluntary sectors.