

Explanatory Memorandum to the Audit and Assessment Reports (Wales) (Amendment) Order 2011

This Explanatory Memorandum has been prepared by the Department of Local Government and Communities and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

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) (Amendment) Order 2011. I am satisfied that the benefits outweigh any costs.

Carl Sargeant AM
Minister for Local Government and Communities
31 October 2011

1. Description

Section 19 of the Local Government (Wales) Measure 2009 requires the Auditor General for Wales to issue audit and assessment reports each year on the compliance by local authorities, National Park authorities and fire and rescue authorities (Welsh improvement authorities) with the improvement obligations contained in the Measure. This Order will change the date by which the Auditor General for Wales is required to send the reports from 30 November to 31 January each financial year.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

No matters of special interest.

3. Legislative background

The Order is made in exercise of the powers conferred on the Welsh Ministers by section 19 (3)(b) of the Local Government (Wales) Measure 2009 (“the Measure”).

Section 17 of the Measure imposes a duty on the Auditor General for Wales to carry out an audit for the purposes of determining whether a Welsh improvement authority has discharged its duties under section 15 of the Measure.

Section 18 of the Measure places a duty on the Auditor General for Wales to carry out an assessment in respect of each financial year determining whether a Welsh improvement authority is likely to comply with the requirements of Part 1 of the Measure.

Section 19(1) of the Measure requires the Auditor General for Wales to issue a report or reports in respect of each Welsh improvement authority:

- (a) certifying that the Auditor General has carried out an audit under section 17 in respect of the previous financial year;
- (b) stating whether as a result of the audit the Auditor General believes—
 - (i) that the authority has discharged its duties under section 15(1) to (7); and
 - (ii) that the authority has acted in accordance with any guidance issued under section 15(8);

- (c) certifying that the Auditor General has carried out an assessment under section 18 in respect of the financial year;
- (d) describing the extent to which information and documents provided to the Auditor General under section 33 have been taken into account in carrying out that assessment;
- (e) stating whether as a result of the assessment the Auditor General believes that the authority is likely to comply with the requirements of this Part during the financial year;
- (f) if the Auditor General thinks it appropriate in the light of an audit or assessment, recommending action that the authority should take in order to comply with the requirements of this Part or act in accordance with guidance issued under section 15(8) (whether in respect of that or a subsequent financial year);
- (g) if the Auditor General thinks it appropriate in the light of an audit or assessment, recommending that the Welsh Ministers should—
 - (i) provide assistance to the authority by exercising their power under section 28;
 - (ii) give a direction under section 29 and, if so, the type of direction;
- (h) stating whether, in the light of an audit or assessment, the Auditor General is minded to carry out a special inspection under section 21.

Section 19(2) and (3) provides that copies of the report must be sent to the authority concerned and the Welsh Ministers-

- (a) by 30 November in the financial year during which the audit was carried out or to which the assessment relates; or
- (b) by such other date as the Welsh Ministers may specify by order.

This instrument follows the negative resolution procedure.

4. Purpose & intended effect of the legislation

This Order amends the Audit and Assessment Reports (Wales) (Order) 2010 by providing that, in respect of financial years beginning on or after 1 April 2011, the date by which the report is to be sent is to be 31 January in the financial year during which the audit was carried out or to which the assessment relates.

It is intended that the Order will come into force on 22 November 2011.

5. Consultation

Consultation was commenced on 1 August 2011 for eight weeks. Please refer to the Regulatory Impact Assessment consultation paragraph below for further information.

PART 2 – REGULATORY IMPACT ASSESSMENT

6. Options

Option 1: Do Nothing

Under Section 19 of the Measure, the Auditor General for Wales must issue a report or reports in respect of each Welsh improvement authority and send it to the Welsh Ministers and the Welsh improvement authority concerned by 30 November. Without this Order the Auditor General would not be able to take account of the work of other relevant regulators in their reports in a timely manner.

Option 2: Make the Legislation

The Order will ensure that the Auditor General for Wales is under a statutory duty to send audit and assessment reports on all Welsh improvement authorities by 31 January each financial year.

a) Benefits

Current audit, inspection and assessment timetables for other regulators and assessment processes mean that findings from these cannot always be fully built into the Auditor General for Wales' reports if these need to be published by 30 November. Extending the publication date will, enable the Auditor General to incorporate the findings into the reports in a timely manner. The extended date would also give the Auditor General a more reasonable timeframe to include performance information from improvement authorities.

b) Costs

The cost of audit is met by individual Welsh Improvement authorities and is agreed between the individual Welsh Improvement authorities and Wales Audit Office ("WAO") on an annual basis. In addition monies to fund/part fund improvement inspections for Welsh Improvement authorities (which include All Wales and specific studies resulting from the improvement process, and funding of the WAO relationship manager and interim corporate assessment process) is provided for centrally. The Order will not increase the costs.

7. Consultation

The consultation was commenced on 1 August for 8 weeks. Three responses were received in relation to the formal consultation and these are detailed below:-

- **Flintshire County Council** – were content with the proposal commenting that the alteration to the revised date will enable more timely inclusion of other regulators' works and a more comprehensive overview of the Improvement Authorities' Improvement Plans.

- **Ceredigion County Council** - The Council acknowledged that extending the publication date for the Annual Improvement Report would give the WAO more time to incorporate the findings of other audits / inspections / assessments into the Report. However, it was concerned that a 31 January publication date would not allow it to address the recommendations and incorporate them in its financial planning for the new financial year.
- **North Wales Fire and Rescue Authority (FRA)** – The FRA commented that the annual Improvement / Risk Reduction publication deadline is different for FRAs. They would like to see this arrangement reviewed in relation to a later audit and assessment report date to maximise FRAs' ability to react in the current financially challenging environment.

Prior to the formal consultation, officials discussed the proposal with the 3 fire and rescue authorities and 2 of the 3 were supportive of the change in date and had no concerns in terms of their business planning arrangements.

The proposed Welsh Government response is set out below:-

Section 19(3)(b) of the Local Government (Wales) Measure 2009 provides Welsh Ministers with a power to specify a date by which the Auditor General for Wales should send copies of audit and assessment reports. In changing the date from 30 November to 31 January, the Auditor General will be in a position to take into account the work of relevant regulators which could mean an omission from his reports if the findings of, for example, CSSIW were omitted from them. We accept that changing the date by when the Auditor General for Wales publishes his audit and assessment reports to 31st January each year may compress the time available to local authorities to incorporate changes they deem necessary into their final budget. However, in most local authorities the budget development process begins when the draft revenue settlement is published in October – in many cases before the authority has published its own improvement report for the previous year. It extends into early March, by which time all local authorities are obliged to set budgets and council tax levels. In that sense, the exact point during that period when the Auditor General publishes his report is less relevant: budget-setting will begin before and continue after that point in all cases.

Following discussions with FRAs the Welsh Government is currently consulting on proposals to change the date by which FRAs are required to publish their improvement plans under Section 15 of the Measure.

Similarly the extended date would enable the findings of Operational Assurance of Service Delivery Peer Assessment to be built into fire and rescue authorities' audit and assessment reports.

The extended date would also give WAO a more reasonable timeframe to include performance information from Welsh improvement authorities.

8. Competition Assessment

Not applicable.

9. Post implementation review

This will be undertaken following the publication of the audit and assessment reports published under the new timeframe.