

# **TYNWALD AUDITOR GENERAL BILL 2010**

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## **Explanatory Memorandum**

- 1.** This Bill is promoted by the Council of Ministers. It provides for the appointment and functions of a new officer of Tynwald, the Tynwald Auditor General (referred to in this Memorandum as “the Auditor”).
- 2.** Part 1 (*clauses 1 to 3*) provides for the short title and commencement and the interpretation of provisions in the Bill.
- 3.** Part 2 (*clauses 4 to 12*) provides for the Auditor’s appointment and functions, while Part 3 (*clauses 13 to 21*) contains provision about the Auditor’s powers; offences and penalties in respect of them; consequential amendments; and a repeal.
- 4.** *Clause 4*, together with *Schedule 1*, provides for the Auditor’s appointment, *clause 5* specifies the officer’s general functions, amongst which is the conduct of value for money inspections under *clause 6*. Inspections may be carried out on the Auditor’s own initiative or after a request from Tynwald or from an individual.
- 5.** *Clause 7* requires the Auditor to produce a report after a value for money inspection, and specifies the procedure which is to be followed in its preparation. *Clause 8* imposes a duty on the Auditor to co-operate with the committee of Tynwald dealing with the scrutiny of public accounts. *Clause 9* imposes a requirement that before undertaking an inspection or discharging any other function in respect of a specified body, the Auditor consider whether, in the public interest, the matter is one which the Committee should investigate.
- 6.** *Clause 10* provides for referrals to the Auditor, and for the conduct of investigations, and the procedure where the Auditor decides not to investigate. *Clause 11* provides for the production of reports on investigations and the privileges attaching to them.
- 7.** *Clause 12* provides for an annual report to Tynwald.

- 8.** *Clause 13* confers on the Auditor a right of access to documents and information, while *clause 14* confers a power to enter and inspect premises. *Clause 15* contains special rules about the disclosure of information relating to a person's tax and customs affairs.
  
- 9.** *Clause 16* makes provision about confidentiality of information.
  
- 10.** *Clause 17* creates offences in relation to the provision of false information and falsification of documents in connection with an inquiry by the Auditor, and *clause 18* creates offences in relation to the obstruction of an inquiry. *Clause 19* deals with offences by bodies corporate.
  
- 11.** *Clause 20* provides for *Schedule 2*, which contains consequential amendments, to have effect.
  
- 12.** *Clause 21* repeals a provision of the Audit Act 2006 which will be rendered unnecessary if this Bill is enacted.
  
- 13.** An assessment of the financial implications of this Bill has been prepared and it is estimated that costs could be in the region of £1,000,000.
  
- 14.** In the view of the member moving the Bill its provisions are compatible with the Convention rights within the meaning of the Human Rights Act 2001.

## **Arrangement of Sections**

Section

### PART 1

#### OPENING PROVISIONS

1. Short title
2. Commencement
3. Interpretation

### PART 2

#### APPOINTMENT AND FUNCTIONS OF TYNWALD AUDITOR GENERAL

4. Appointment
5. General functions
6. Value for money inspections
7. Reports on value for money inspections
8. Consultation with the Accounts Committee
9. Matters for investigation by the Accounts Committee
10. Referrals
11. Reports on investigations under section 10
12. Annual and other reports

### PART 3

#### MISCELLANEOUS AND GENERAL

##### *Auditor's powers*

13. Auditor's right of access to documents and information
14. Power to enter and inspect

- 15.** Information that relates to a person's tax and customs affairs
- 16.** Confidentiality of information

*Offences and penalties*

- 17.** Provision of false record or information
- 18.** Obstruction of inquiry
- 19.** Offence by body corporate

*Supplementary*

- 20.** Consequential and minor amendments
- 21.** Repeal

SCHEDULES: —

Schedule 1 — The Auditor

Schedule 2 — Consequential amendments

## **A BILL**

to make provision for the appointment and functions of the Tynwald Auditor General; to amend the Audit Act 2006; and for connected purposes.

**B**E IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

### **PART 1**

#### **OPENING PROVISIONS**

**1.** The short title of this Act is the Tynwald Auditor General Act 2011. Short title

**5** **2.** (1) This Act, other than section 1, paragraph 9 of Schedule 2 and this section, shall come into operation on such day as the Council of Ministers may by order appoint. Commencement

(2) An order under subsection (1) may —

**10** (a) appoint different days for different provisions and for different purposes;

(b) make such consequential, transitional or transitory provisions and savings as the Council of Ministers considers necessary in connection with any provision brought into operation by the order.

Interpretation

**3.** (1) In this Act —

“the Accounts Committee” means such committee of Tynwald as is specified by a resolution of Tynwald;

“the Auditor” has the meaning given in section 4(1);

“relevant functions” has the meaning given in subsection (2)(b); **5**

“relevant persons” has the meaning given in subsection (2)(a);

“specified body” has the meaning given in section 6(8); and

“the Tynwald Management Committee” means such committee of Tynwald as is specified by a resolution of Tynwald. **10**

## (2) For the purposes of this Act, but subject to subsection (3) —

(a) the following are “relevant persons”— **15**

(i) the Tynwald Commissioner for Administration (whose office is established by the Tynwald Commissioner for Administration Act 2011);

[c.11]

(ii) the Commissioner appointed under paragraph 2(1) of Schedule 1 to the Police Act 1993; **20**

[c.23]

(iii) the Commissioner appointed under section 28 of the Regulation of Surveillance, etc. Act 2006;

(iv) the Communications Commission;

(v) the Financial Supervision Commission;

(vi) an adjudicator under the Financial Services Ombudsman Scheme; **25**

(vii) the Insurance and Pensions Authority;

(viii) the Isle of Man Gambling Supervision Commission;

(ix) the Isle of Man Office of Fair Trading but only in respect of its functions under the Financial Services Ombudsman Scheme; **30**

[c.15]

(x) a person appointed to audit an account under section 3 of the Audit Act 2006; and

(xi) a person directed to undertake an extraordinary audit under section 11 of that Act; and

(b) “relevant functions” are functions conferred on a relevant person by or under an enactment.

5 (3) For the sake of clarity, the persons mentioned in subsection (2)(a)(x) and (xi) are relevant persons only in connection with the conduct of the audits mentioned in those sub-paragraphs.

PART 2

APPOINTMENT AND FUNCTIONS OF TYNWALD  
AUDITOR GENERAL

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4. (1) There shall be a Tynwald Auditor General (referred to in this Act as “the Auditor”). Appointment

(2) The Auditor shall be an officer of Tynwald.

15 (3) Schedule 1 makes provision about the appointment and functions of the Auditor.

5. The general functions of the Auditor are — General functions

(a) to conduct audits of bodies subject to audit under the Audit Act 2006;

20 (b) to carry out value for money inspections (see sections 6 and 7);

(c) to undertake regular consultation with the Accounts Committee and to provide assistance with the Committee’s investigations (see section 8);

25 (d) to identify matters that may be appropriate for investigation by the Accounts Committee (see section 9);

(e) to examine matters referred to the Auditor by members of the public, Tynwald, or members of Tynwald (see sections 10 to 12); and

30 (f) to discharge the functions imposed by section 4 of the Finance Act 1958 as substituted by this Act. [XVIIIp.974]

6. (1) The Auditor may carry out an inspection (a “value for money inspection”) of a specified body to determine whether that body is discharging its functions, and using its resources, economically, effectively and efficiently. Value for money inspections

(2) Tynwald may request the Auditor to carry out a value for money inspection of a specified body in respect of any one or more of that body's functions.

(3) In deciding whether to carry out, and in carrying out a value for money inspection the Auditor must have regard to — **5**

(a) any relevant recommendations made by the Accounts Committee;

(b) regulations made under section 12 of the Audit Act 2006; and

(c) directions given under section 13 of that Act. **10**

(4) If the Auditor, after considering a request under subsection (2), decides not to conduct an inspection, the Auditor must send a statement of that decision and the reasons for it to the Accounts Committee.

(5) If the Accounts Committee, having considered the statement sent to it under subsection (4), concludes that a value for money inspection is nevertheless appropriate in the particular case, it may direct the Auditor General to conduct one. **15**

(6) A direction under subsection (5) may include such supplementary instructions to the Auditor as appear to the Accounts Committee to be appropriate. **20**

(7) The Auditor must comply with a direction under subsection (5).

(8) In this Act "specified body" means a body that is required to be audited in accordance with the Audit Act 2006. **25**

Reports on  
value for  
money  
inspections

**7.** (1) After carrying out a value for money inspection the Auditor must prepare a draft report.

(2) A draft report must mention any matter in respect of which the Auditor believes that the specified body is not —

(a) performing any of its functions; or **30**

(b) using its resources,

effectively, efficiently and economically.

(3) If a draft report mentions any matter referred to in subsection (2), the Auditor may include recommendations as to the remedial action that the Auditor considers necessary or desirable. **35**



(4) The Auditor must send the draft report to —

(a) the specified body concerned; and

(b) any person named in it,

**5** and must invite their comments on it within such time as is specified in the invitation.

(5) The Auditor may amend the draft report in the light of the comments.

**10** (6) If a draft report mentions any matter referred to in subsection (2) or contains recommendations under subsection (3), the specified body concerned must as soon as practicable, and in any event within 3 months, produce and deliver to the Auditor a performance plan specifying —

(a) the action (if any) which the body proposes to take as a result of the report; and

**15** (b) when it proposes to take that action.

In reckoning the period of 3 months, disregard August and September.

(7) The Auditor must then produce a final report and send copies to —

**20** (a) the Accounts Committee;

(b) the Chief Minister;

(c) the Treasury;

(d) if the report relates to a specified body, that body; and

(e) any other person named in the report.

**25** (8) With each copy of the report sent under subsection (7) the Auditor must send —

(a) a summary of the comments received under subsection (4);

(b) the Auditor's response to those comments; and

**30** (c) any performance plan prepared under subsection (6).

(9) The Auditor must lay the final report and any performance plan prepared under subsection (6) before Tynwald.

(10) For the purposes of the law of defamation a report under this section (whether draft or final) is absolutely privileged.

Consultation  
with the  
Accounts  
Committee

**8.** (1) The Auditor must consult the Accounts Committee if it seems to the Auditor appropriate to do so for the efficient and effective discharge of the Auditor's functions or those of the Accounts Committee. **5**

(2) The Auditor must, when requested to do by the Accounts Committee —

(a) attend its meetings; and

(b) provide such advice and assistance to it as is practicable. **10**

Matters for  
investigation  
by the  
Accounts  
Committee

**9.** (1) Before undertaking any inspection or discharging any other function in respect of any specified body, the Auditor must consider whether the matter under consideration or any aspect of it may be appropriate for investigation by the Accounts Committee.

(2) If, after considering the matter, the Auditor considers that it may be appropriate in the public interest for an investigation into the matter to be undertaken by the Accounts Committee, the Auditor must advise the Accounts Committee accordingly. **15**

(3) The Accounts Committee may publish guidelines in respect of the factors to be taken into account in determining when the Auditor should advise the committee that it should undertake an investigation. **20**

Referrals

**10.** (1) When requested by a member of the public, by Tynwald or by a member of Tynwald, the Auditor may investigate any matter relating to — **25**

(a) the performance of a specified body's functions; or

(b) the economic, effective or efficient use of its resources.

(2) The Auditor is not bound to comply with a request for an investigation under this section.

(3) In deciding whether to investigate any matter, the Auditor must consider whether that matter is appropriate for investigation by the Auditor and whether such an investigation would be in the public interest. **30**

(4) In deciding whether to carry out, and in carrying out, an investigation under this section the Auditor must have regard to — **35**

- (a) any relevant recommendations made by the Accounts Committee;
  - (b) regulations made under section 12 of the Audit Act 2006; and
  - 5** (c) directions given under section 13 of that Act.
- (5) If the Auditor, after considering a request, decides not to conduct an investigation, the Auditor must send a statement of the reasons for the decision to —
- (a) the person making the request;
  - 10** (b) any other person who is named in the request; and
  - (c) the Accounts Committee.
- (6) In exercising his or her functions in relation to an investigation under this section which involves or affects matters, some of which are capable of inquiry by a relevant person in the course of discharging a relevant function, the Auditor must have regard to the principles that so far as possible —
- 15** (a) the Auditor and relevant person should co-operate in the conduct of linked inquiries;
  - (b) matters should only be inquired into once; and
  - 20** (c) evidence should only be taken once.
- (7) If the Auditor and the relevant person cannot agree the way in which the principles in subsection (6) are to be applied in a particular case, they must seek, and comply with, the directions of the Chief Minister on the application of those principles.
- 25** (8) In a case where subsection (7) applies and the relevant person is appointed by the Governor in Council, the Chief Minister must consult the Governor before giving directions under that subsection.
- 30** **11.** (1) After carrying out an investigation under section 10 the Auditor must prepare a draft report.
- (2) The draft report must mention any matter about which the Auditor believes —
- (a) that a specified body is not —
    - (i) performing its functions; or

- (ii) using its resources,  
economically, effectively or efficiently;
  - (b) that statutory requirements with respect to finance, accounts and audit are not being met; or
  - (c) that the public interest otherwise requires it. **5**
- (3) If a draft report mentions any matter referred to in subsection (2), the Auditor may include recommendations about remedial action which the Auditor considers necessary or desirable.
- (4) The Auditor must send the draft report to — **10**
  - (a) any specified body in respect of which matters are mentioned under subsection (2); and
  - (b) any person named in it,and must invite their comments within such time as the Auditor specifies. **15**
- (5) The Auditor may amend the draft report in the light of comments received under subsection (4).
- (6) If a draft report mentions any matter referred to in subsection (2) or contains recommendations under subsection (3), the specified body concerned must as soon as practicable, and in any event within 3 months, produce and deliver to the Auditor a performance plan stating — **20**
  - (a) the action (if any) which the body proposes to take as a result of the report; and
  - (b) when it proposes to take that action. **25**
- In reckoning the period of 3 months, disregard August and September.
- (7) The Auditor must then produce a final report and send copies of it, with any performance plan annexed to it, to — **30**
  - (a) the Accounts Committee;
  - (b) the Chief Minister;
  - (c) the Treasury;

- (d) if the report relates to a specified body, that body;  
and
  - (e) any other person named in the report.
- 5 (8) The Auditor must lay the final report and any performance plan prepared under subsection (6) before Tynwald.
- (9) For the purposes of the law of defamation, a report under this section (whether draft or final) is absolutely privileged.
- 10 **12.** (1) The Auditor must lay before the ordinary sitting of Tynwald in July, or the next practicable sitting, an annual report on the general exercise of the Auditor’s functions. Annual and other reports
- (2) The annual report must include in particular —
    - 15 (a) any general recommendations that the Auditor may have arising from the exercise of the Auditor’s functions in the period in question; and
    - (b) a list of all requests received under sections 6 and 10 and the action which the Auditor has taken in respect of each request.
  - (3) Tynwald may —
    - 20 (a) give the Auditor a direction as to the form and content of a report under subsection (1); and
    - (b) impose a requirement that the Auditor must include in the report matters specified in the direction.
  - 25 (4) The Auditor must comply with any direction under subsection (3).
  - (5) The Auditor may from time to time lay before Tynwald such other reports with respect to the exercise of the Auditor’s functions as the Auditor thinks fit.
  - 30 (6) For the sake of clarity in subsection (1) “the ordinary sitting of Tynwald in July” means a sitting in that month which is not —
    - (a) a meeting of Tynwald convened under section 3 of the Isle of Man Constitution Amendment Act 1919; or [X p.390]
    - (b) a sitting of Tynwald at St John’s.

## PART 3

## MISCELLANEOUS AND GENERAL

*Auditor's powers*

Auditor's  
right of  
access to  
documents  
and  
information

**13.** (1) Specified bodies must provide the Auditor with every facility and all information which the Auditor may reasonably require for the purpose of the exercise of any functions under this Act. **5**

(2) The Auditor has a right of access at all reasonable times to every document or record to which this subsection applies, access to which appears to the Auditor to be necessary for the purpose of the exercise of any functions under this Act. **10**

This does not limit the application of subsection (1) but is subject to subsection (3).

(3) This Act does not authorise the Auditor to require the production of documents that are in the custody of a member or officer of Tynwald, or a member or officer of a Branch of Tynwald, in that person's capacity as such a member or officer. **15**

(4) Subsection (2) applies to any document or record in the custody or control of —

- (a) the specified body;
- (b) a person who has received financial assistance from the specified body, whether by way of grant, loan or guarantee; **20**
- (c) a person from whom the specified body has acquired an interest in any property;
- (d) a body corporate any share or other interest in which has been acquired by the specified body; and **25**
- (e) a person who has supplied goods or services —
  - (i) to the specified body under a contract to which the body was party; or
  - (ii) under a relevant sub-contract (see subsection (11)). **30**

(5) Subsection (2) also applies to a document or record of a description specified in an order made for the purpose of this section by the Treasury on the recommendation of the Auditor.

(6) If the Auditor makes a recommendation under subsection (5) the Treasury must within 3 months — **35**

- (a) make an order giving effect to the recommendation; or
- (b) lay before Tynwald a report giving its reasons for not giving effect to the recommendation.

5 In reckoning the period of 3 months, disregard August and September.

(7) The Auditor may by notice in writing —

10 (a) require a person who appears to the Auditor to be in possession or control of a document or record to which subsection (2) applies and which is specified in the notice —

(i) to produce the document or record to the Auditor; or

15 (ii) if the document or record is contained in a computer, to produce it in a form which may be taken away and in which it is visible and legible;

(b) require a person who appears to the Auditor to have information of the kind specified in subsection (10) —

20 (i) to give the Auditor any assistance, information and explanation which appears to the Auditor necessary for the exercise of any functions under this Act;

(ii) to attend before the Auditor in person to give any such assistance, information or explanation; or

25 (iii) if the information is contained in a computer, to produce it in a form which may be taken away and in which it is visible and legible; and

30 (c) require the person by whom or on whose behalf the computer is or has been used, or any person having charge of or otherwise concerned with the operation of the computer, apparatus or material, to afford the Auditor such assistance as the Auditor may reasonably require.

35 (8) No obligation to maintain secrecy or other restriction on the disclosure of information to the Auditor, whether imposed by any enactment or by any rule of law, applies to the disclosure of information for the purposes of an investigation by the Auditor.

(9) In addition to the powers specified in subsection (7) the Auditor may at any reasonable time have access to, and inspect

and check the operation of, any computer and any associated apparatus or material which is or has been used in connection with a document or record specified in a notice under subsection (7)(a) or information referred to in subsection (7)(b).

(10) The information referred to in subsection (7)(b) is information relating to — **5**

(a) the specified body;

(b) a document to which subsection (2) applies; or

(c) the person having custody or control of such a document. **10**

(11) In this section “relevant sub-contract”, in relation to a body, means a contract the performance of which fulfils, or contributes to the fulfilment of, an obligation to supply goods or services to the body under another contract.

(12) An order under subsection (6) shall not come into operation unless it is approved by Tynwald. **15**

Power to enter  
and inspect

**14.** (1) The Auditor may in the exercise of any function under this Act —

(a) enter and inspect any premises occupied or controlled by any specified body; and **20**

(b) while on the premises, inspect anything there.

(2) If premises falling within subsection (1) are lawfully occupied by some person other than the specified body the Auditor must not enter those premises —

(a) without first giving the occupier reasonable notice of the Auditor’s intention to enter; and **25**

(b) if the premises are, or form part of, a residence, without first obtaining the consent of the occupier to enter.

Information  
that relates to  
a person’s tax  
and customs  
affairs

**15.** (1) Nothing in this Act authorises —

(a) the Auditor to require; or **30**

(b) the relevant authority to give to the Auditor,

information that relates to a person’s tax and customs affairs except in accordance with this section.



(2) Information “relates to a person’s tax and customs affairs” if it is information about, acquired as a result of, or held in connection with the exercise of, a function of the relevant authority that relates to the collection, assessment or enforcement of —

- 5** (a) any tax;  
 (b) any duty of customs;  
 (c) any duty of excise,

in respect of the person, but it does not include information about internal administrative arrangements of the relevant authority in relation to those matters.

**10**

(3) Information that relates to a person’s tax and customs affairs may only be supplied by the relevant authority to the Auditor with the person’s written consent.

(4) In this section—

**15** “the relevant authority” means —

(a) in relation to value added tax, any duty of customs and any duty of excise, the Collector of Customs and Excise;

**20**

(b) in relation to National Insurance contributions, the Treasury; and

(c) in relation to income tax, the Assessor of Income Tax; and

“tax” includes National Insurance contributions of any class.

**25** **16.** (1) For the purposes of this section “relevant information” is information obtained by the Auditor, a person discharging a function of the Auditor’s or the Auditor’s advisers —

Confidentiality  
of information

(a) under a provision of this Act; or

(b) in connection with an inspection or investigation under a provision of this Act.

**30** (2) Relevant information must not be disclosed by any of the persons mentioned in subsection (1) except for a purpose specified in subsection (3) or as permitted by subsection (4), (5) or (6).

(3) The purposes are —

- (a) facilitating or conducting an inspection or investigation under this Act;
  - (b) reporting the conclusions of such an investigation;
  - (c) those of any criminal investigation which is being or may be carried out, whether in the Island or elsewhere; **5**
  - (d) those of any criminal proceedings which have been or may be initiated, whether in the Island or elsewhere;
  - (e) initiating or concluding any such investigation or proceedings; and
  - (f) facilitating a determination of whether any such investigation or proceedings should be initiated or concluded. **10**
- (4) The Auditor may disclose relevant information to a relevant person if the information appears to the Auditor to relate to a relevant function of that person. **15**
- (5) Despite any other provision of this Act, relevant information may be disclosed —
- (a) if it relates to a person, with the consent of that person; and
  - (b) if it relates to more than one person, with the consent of them all. **20**
- (6) If relevant information is to the effect that a person is likely to constitute a threat to the health or safety of others, the Auditor may disclose the information to any person to whom the Auditor thinks it should be disclosed in order to safeguard the interest of those whose health and safety may be threatened as a result. **25**
- (7) In relation to relevant information disclosed under subsection (6), the Auditor must —
- (a) if the Auditor knows the identity of the person to whom the information relates, inform that person of the disclosure of the information, and the person to whom it has been disclosed; and **30**
  - (b) inform the person from whom the information was obtained of the disclosure. **35**
- (8) Neither the Auditor nor any of the Auditor’s staff or advisers (“the relevant persons”) is competent to give evidence in

any proceedings (other than those mentioned in subsection (3)(d)) of matters coming to the knowledge of any of the relevant persons in respect of an investigation by the Auditor.

**5** (9) The Attorney General may give notice in writing (“a non-disclosure notice”) to the Auditor with respect to —

(a) any document or information specified in the notice; or

(b) any class of document of information so specified.

**10** (10) The Attorney General may only give the Auditor a non-disclosure notice if satisfied that the disclosure of the document or information, or of documents or information of that class, would prejudice the security, economic well-being or international relations of the Island or of the United Kingdom.

**15** (11) If a non-disclosure notice is given, nothing in this Act authorises or requires the Auditor or the Auditor’s staff or advisers to communicate to any person or for any purpose anything contained in the information, document or class of information or document (as the case requires).

**20** (12) In this section references to the Auditor’s advisers are to persons from whom the Auditor obtains assistance or advice under paragraph 13 of Schedule 1.

### *Offences and penalties*

**25** **17.** (1) A person is guilty of an offence if, having been required to produce a document or record under this Act, or knowing that a document or record may be required to be produced under this Act, that person with intent to deceive —

Provision  
of false  
record or  
information

(a) destroys the document or record or in any other way renders it unintelligible or useless, or difficult or impossible to retrieve; or

**30** (b) alters it in any way to make the information it contains false or misleading in any material way.

**35** (2) A person shall be guilty of an offence if, having been required to provide information under this Act, the person knowingly provides information that is false, misleading or incomplete in any material way.

(3) A person guilty of an offence under subsection (1) or (2) shall be liable on conviction on information to custody for a term not exceeding 7 years or to a fine, or to both.

Obstruction  
of inquiry

- 18.** (1) If a person —
- (a) without lawful excuse obstructs the Auditor in the exercise of the Auditor’s functions; or
  - (b) does any act or fails to take any action in relation to an investigation which, if the investigation were a proceeding in the High Court, would constitute contempt of court, **5**
- the Auditor may apply by petition to the High Court for the person to be dealt with in accordance with subsection (2).
- (2) If such a petition is presented, the High Court may **10** inquire into the matter and after hearing —
- (a) any witnesses who may be produced against or on behalf of the person in question; and
  - (b) any statement which may be offered in defence,
- may deal with the person as if the person had committed a contempt of court in relation to the High Court. **15**
- (3) If a person —
- (a) without lawful excuse, obstructs the Auditor in the course of the Auditor’s functions; or
  - (b) with the intention of obstructing the Auditor in the course of the Auditor’s functions, destroys or falsifies any document or other evidence relevant to those functions, **20**
- that person commits an offence.
- (4) A person who commits an offence under subsection (3) is liable — **25**
- (a) on conviction on information, to custody for not more than 2 years, or a fine, or both; or
  - (b) on summary conviction to custody for not more than 6 months, or a fine not exceeding £5,000, or both. **30**
- (5) No-one shall be liable to be prosecuted for an offence under subsection (3) if a petition has been presented under subsection (1) in respect of the same conduct, and no-one shall be the subject of a petition under subsection (1) if a prosecution has been commenced against him or her in respect of the same conduct. **35**

(6) Nothing in subsections (1) to (5) is to be construed as applying to —

- (a) any action taken by the specified body under investigation;
- 5** (b) any power or duty of the specified body under investigation to take further action with respect to any matter being investigated.

(7) A person (“A”) commits an offence if A—

- 10** (a) refuses to employ or to continue to employ a person (“B”);
- (b) threatens to dismiss or demote B or threatens to penalise B in any other way in relation to B’s employment or any term or condition of that employment;
- 15** (c) treats B less favourably in relation to B’s employment or any term or condition of that employment; or
- (d) intimidates, coerces or imposes any penalty upon B,

**20** in order to prevent B or any other person from giving information or producing documents to the Auditor, or to punish B or any other person for having done so or having given information or produced documents in the course of an investigation.

(8) If the Auditor has reasonable grounds to believe that a person has contravened subsection (7) the Auditor may give details of the alleged conduct to the Attorney General.

**25** (9) A prosecution for an offence under subsection (7) may only be instituted by or with the consent of the Attorney General.

(10) A person guilty of an offence under subsection (7) is liable —

- (a) on conviction on information to custody for not more than 2 years, a fine, or both; or
- 30** (b) on summary conviction to custody for not more than 6 months, a fine of £5,000, or both.

**19.** (1) This section applies where an offence under this Act is committed by a body corporate and it is proved that the offence — Offence by  
body corporate

- 35** (a) was committed with the consent or connivance of an officer of the body; or

(b) was attributable to neglect on the part of such an officer.

(2) The officer, as well as the body, shall be guilty of the offence.

(3) In this section “officer” includes —

(a) a director, manager or secretary; **5**

(b) a person purporting to act as a director, manager or secretary;

(c) if the affairs of the body are managed by its members, a member; and

[c.19] (d) in relation to a limited liability company constituted under the Limited Liability Companies Act 1996, a member, the company’s manager, or registered agent. **10**

*Supplementary*

Consequential and minor amendments **20.** Schedule 2, which contains consequential and minor amendments of enactments, has effect. **15**

Repeal **21.** Section 7 of the Audit Act 2006 (special directions to auditor) is repealed.

Section 4(3)

SCHEDULE 1

THE AUDITOR

Selection of  
a candidate

**1.** (1) A candidate for appointment as the Auditor must be selected by a committee (“the Selection Committee”) consisting of —

- (a) the Chair of the Tynwald Management Committee;
- (b) the Chair of the Accounts Committee; and
- (c) the Chief Minister.

The Chair of the Accounts Committee must chair the Selection Committee.

[c.20]

(2) For the sake of clarity, section 21 of the Interpretation Act 1976 (delegation of functions by public officer) applies to each of the members of the Selection Committee, but section 20 of that Act (exercise of functions during vacancy or absence or inability of holder) does not.

(3) Before the first appointment of an Auditor under this Act, and at any time when the office is vacant the Selection Committee must consult such persons and bodies as appear to the Selection Committee to be appropriate, whether in the Island or elsewhere, including bodies representing the audit and accountancy professions in the Island about the process to be adopted for selecting a candidate.

(4) The Selection Committee must seek Tynwald’s approval of the candidate it has selected, and if such approval is not obtained, must propose an alternative candidate who satisfies the requirements of paragraph 2.

Qualifications

**2.** A candidate for appointment as the Auditor must be a person whom the Selection Committee believes —

- (a) has an appropriate qualification in accountancy;
- (b) has substantial experience of conducting value for money investigations (whether in the Island or elsewhere);
- (c) has appropriate knowledge and experience of accountancy and auditing; and
- (d) will command the confidence of the public and Tynwald.

Disqualification

**3.** (1) A person is not eligible to be a candidate for appointment as the Auditor if that person is —

- (a) a member of Tynwald;
- (b) a member or officer of a local authority;
- (c) a member or officer of a body that is required to have its accounts audited in accordance with the Audit Act 2006;
- (d) an officer of Tynwald or a Branch of Tynwald (other than the Tynwald Commissioner for Administration);

- SCH. 1
- (e) a member of the staff of Tynwald or a Branch of Tynwald;
  - (f) a member, officer or servant of a Department or a Statutory Board;
  - (g) a member of the Isle of Man Constabulary.
- This is subject to sub-paragraphs (3) and (4).
- (2) The Auditor is not qualified for election or appointment to an office or employment mentioned in sub-paragraph (1).
  - (3) Nothing in this paragraph prevents the Auditor from being appointed also as the Tynwald Commissioner for Administration.
  - (4) A person who would be disqualified for appointment as Auditor by sub-paragraph (1) may nevertheless —
    - (a) be considered as a candidate if the person undertakes to resign the office or employment if appointed as Auditor; and
    - (b) take office as Auditor once the person's resignation has become effective.
- Terms and conditions
- 4.** The terms and conditions of employment and the term of office of the Auditor shall be such as Tynwald may determine after a recommendation by the Selection Committee.
- Appointment of the Auditor
- 5.** (1) Once the Selection Committee's selection has been approved by Tynwald, the Auditor shall, with effect from such date as the Auditor and the Selection Committee may agree, be appointed and employed by Tynwald.
- (2) The Auditor shall hold office for such term as is determined under paragraph 4, and may (but need not) be reappointed upon the expiry of that term.
- Restrictions
- 6.** (1) The Auditor must not —
- (a) enter into any other contract of employment;
  - (b) accept any other office (except that of Tynwald Commissioner for Administration); or
  - (c) carry on any trade, profession or vocation,
- except with the approval of the Selection Committee.
- (2) The Selection Committee may attach conditions to such approval.
- Resignation and removal
- 7.** The person holding the office of Auditor —
- (a) may resign by written notice to the Clerk of Tynwald; and
  - (b) may be removed from office by resolution of Tynwald in accordance with paragraph 8.



Procedure for  
removal

**8.** (1) Tynwald may revoke the appointment of a person to the office of Auditor on a motion in respect of which the provisions of sub-paragraphs (2) to (5) are satisfied. SCH. 1

(2) A motion may only be tabled in the names of the President of Tynwald and the Speaker acting jointly and on the advice of the Clerk of Tynwald.

(3) The motion must allege one of the following grounds for revocation, namely that the person holding the office of Auditor —

- (a) has not carried out the duties of the office in a competent manner;
- (b) is incapacitated either mentally or physically from carrying out the duties of the office;
- (c) has neglected to carry out all or any of the duties of the office;
- (d) has failed to comply with the requirements of paragraph 6(1) (restrictions on other employment and professional activity);
- (e) has failed to comply with any term or condition of the appointment;
- (f) has engaged in conduct incompatible with the office of Auditor;
- (g) has taken leave of absence not provided for by the terms and conditions of the appointment; or
- (h) has been convicted of an offence (in the Island or elsewhere) and by reason of that conviction shown himself or herself not to be a fit and proper person to continue to hold the office.

(4) The motion must not be moved unless the person holding the office of Auditor —

- (a) has been given a copy of a statement in support of the motion setting out details of the evidence relied upon in support of the alleged grounds for revocation; and
- (b) has been given such reasonable opportunity as the circumstances permit to prepare a written statement in respect of that evidence.

(5) The Clerk of Tynwald must forward a copy of the statements mentioned in sub-paragraph (3) to each member of Tynwald with the Order Paper for the sitting at which the motion is to be considered.

(6) Once the motion has been tabled, the Selection Committee may suspend the Auditor from office.

(7) If the motion —

- (a) is withdrawn;
- (b) is lost after debate;
- (c) is not debated within 3 months of being tabled; or
- (d) is debated but not voted upon within that time,

SCH. 1 the Auditor must be restored to office without loss of remuneration or any other benefits.

(8) In reckoning the period of 3 months referred to in sub-paragraph (7)(c) disregard August and September.

(9) For the sake of clarity, the definition of “the Speaker” in section 3 of the Interpretation Act 1976 does not apply for the purposes of this paragraph.

When office  
of Auditor  
becomes  
vacant

**9.** (1) The office of Auditor becomes vacant if the term of appointment of the person holding the office expires and is not renewed.

(2) It also becomes vacant if the person holding the office —

(a) dies;

(b) resigns by giving notice to that effect to the Clerk of Tynwald;

(c) accepts nomination to become a member of Tynwald;

(d) accepts an office in the public service of the Island;

(e) becomes a member, officer or servant of any local authority;

(f) is compulsorily detained as a patient in a hospital (but otherwise than by virtue of Schedule 2A of the Summary Jurisdiction Act 1989, Schedule 1A of the Criminal Jurisdiction Act 1993 or section 2, 4, 5 or 132 of the Mental Health Act 1998 (short term detentions));

(g) has a receiver appointed in respect of his or her property;

(h) becomes bankrupt or makes a composition or arrangement with his or her creditors;

(i) is convicted, in the Island or elsewhere, of an offence involving corruption; or

(j) is convicted, in the Island or elsewhere, of an offence and sentenced to custody.

(3) It also becomes vacant if Tynwald acting in accordance with paragraph 8 revokes the appointment.

[c.15]  
[c.9]  
[c.3]

Exercise of  
functions  
during  
absence,  
inability or  
vacancy and  
delegation

**10.** Section 20 of the Interpretation Act 1976 (power to appoint deputy during absence, inability or vacancy) applies to the office of the Auditor as if the Accounts Committee were the appropriate authority, but section 21 of that Act (power to delegate functions to deputy) does not.

General  
powers

**11.** The Auditor may, with the approval of the Treasury—

(a) enter into contracts; and

(b) acquire and dispose of land and other property.

This paragraph does not limit the operation of section 26(3) of the Interpretation Act 1976. SCH. 1

**Staff**                    **12.** (1) The Auditor may, with the approval of the Treasury as to numbers, appoint staff to assist in carrying out the Auditor's functions.

(2) The terms and conditions of appointment of such staff, including arrangements for the payment of pensions, allowances or gratuities to, or in respect of, any person who has ceased to be a member of staff of the Auditor shall be determined by the Auditor with the approval of the Treasury.

**Appointment of persons to provide services**                    **13.** (1) The Auditor may, with the approval of the Treasury, appoint any person to provide services by assisting or advising the Auditor in carrying out that officer's functions.

(2) The fees and allowances to be paid to that person shall be determined by the Auditor with the approval of the Treasury.

**Delegation of functions**                    **14.** (1) Any function of the Auditor may be exercised by —

- (a) a member of the Auditor's staff; or
- (b) a person providing services to the Auditor,

authorised by the Auditor for that purpose.

(2) Tynwald may by resolution impose limitations and conditions on the exercise of the Auditor's power to authorise others to discharge functions under sub-paragraph (1).

(3) Any authorisation given under sub-paragraph (1) does not affect the responsibility of the Auditor for the exercise of the function.

**Validity of acts**                    **15.** The validity of any act of the Auditor is not affected by any defect in the appointment of the Auditor, including a disqualification (if any) for holding such appointment.

**Financial provision**                    **16.** The following shall be a charge on the General Revenue —

- (a) the salary, pension and allowances of the Auditor; and
- (b) any expenses incurred by the Auditor in the exercise of the functions of the Auditor.

**Accounts and audit**                    **17.** (1) The Auditor must —

- (a) keep accounts; and
- (b) prepare annual accounts in respect of each financial year.

SCH. 1

(2) The accounts of the Auditor must be audited in accordance with the Audit Act 2006 by a person selected for the purpose by the Public Accounts Committee.

(3) The financial year of the Auditor is —

(a) the period beginning with the date on which the first Auditor is appointed and ending with 31 March next following that date; and

(b) each successive period of 12 months ending with 31 March.

Section 20

SCHEDULE 2

CONSEQUENTIAL AMENDMENTS

Finance Act 1958 (XVIII p.974)

1. For section 4 substitute —

“Audit 4. (1) The Tynwald Auditor General must audit the accounts of —

(a) the General Revenue; and

(b) the Reserve Fund,

in accordance with the provisions of the Audit Act 2006. [c.15]

(2) The Tynwald Auditor General must lay a report on those accounts before Tynwald.”.

*Interpretation Act 1976 (c.20)*

2. In section 3 (interpretation of certain terms) after the definition of “the Taxing Master” insert —

“ “the Tynwald Auditor General” means the person for the time being exercising the office constituted by section 4(1) of the Tynwald Auditor General Act 2011;”.

*Jury Act 1980 (c.9)*

3. In Schedule 1, Part 1, Group A (persons ineligible as jurors: members of the Legislature and associated bodies) after the entry relating to Clerks to Tynwald insert “The Tynwald Auditor General”.

*Civil Service Act 1990 (c.8)*

4. In Schedule 1 —

(a) in Part I after “Clerk of Tynwald” insert “Tynwald Auditor General”; and

(b) in Part II after paragraph 4 insert —

“4A. Employment on the staff of the Tynwald Auditor General.”.

*Audit Act 2006 (c.15)*

5. After section 2(1) (Treasury directions about yearly accounts) insert —

“(1A) Before giving a direction under subsection (1) the Treasury shall consult the Tynwald Auditor General.”.

SCH. 2

- 6.** In section 3 (appointment of auditor) —
- (a) for subsection (1) substitute —
- “(1) All accounts required to be audited under this Act shall be —
- (a) audited by the Tynwald Auditor General; or
- (b) examined by an auditor appointed by the Tynwald Auditor General for the purpose.
- (1A) In a case falling within subsection (1)(b) the audit certificate shall be given by the Tynwald Auditor General after satisfying himself or herself as to the adequacy of the examination.
- (1B) An appointment under subsection (1)(b) shall be in writing and for such period, not exceeding 5 years as the Tynwald Auditor General thinks fit.”;
- (b) in subsection (2) for “the Treasury” substitute “the Tynwald Auditor General”.
- 7.** In section 5 (auditor’s right to documents and information) —
- (a) at the end of subsection (4) add “on the recommendation of the Tynwald Auditor General”; and
- (b) after that subsection insert —
- “(4A) If the Tynwald Auditor General makes a recommendation under subsection (4) the Treasury shall within 3 months —
- (a) make an order giving effect to the recommendation; or
- (b) lay before Tynwald a report giving its reasons for not giving effect to the recommendation.
- In reckoning the period of 3 months, disregard the months of August and September.”.
- 8.** In section 11 (extraordinary audit) —
- (a) in subsection (1) for “an auditor to conduct” substitute “the Tynwald Auditor General to conduct, or cause to be conducted”;
- (b) in subsection (2) for “the appropriate authority” substitute “an appropriate authority”;
- (c) at the end of subsection (3) add “and where the Tynwald Auditor General conducts an extraordinary audit, references in those sections to the auditor are to be read as references to the Tynwald Auditor General.”; and
- (d) for subsection (4) substitute —

“(4) The expenses of an extraordinary audit shall be defrayed — SCH. 2

- (a) in the case of an audit under subsection (1) —
  - (i) where the body is a local authority, a joint board or the churchwardens of a parish, by the Department; and
  - (ii) in any other case, by the Treasury; and
- (b) in the case of an audit under subsection (2), by the appropriate authority at whose direction the audit is conducted.”.

**9.** For section 14 (audit fees) substitute —

“Audit fees **14.** (1) The Tynwald Auditor General shall determine the fee to be paid in respect of any audit under this Act.

(2) Before determining the fee the Tynwald Auditor General must consult —

- (a) the Treasury;
- (b) the body whose accounts are to be audited; and
- (c) if the audit is not to be conducted by the Tynwald Auditor General, the person who is to conduct it.

(3) A body whose accounts are to be audited must pay the fee determined under subsection (2) to the person who is to conduct the audit.”.

**10.** In section 18 (consultative body) after subsection (1)(a) insert —

“(aa) the Tynwald Auditor General,”.

**11.** In section 19 (subordinate legislation) —

- (a) in subsection (1)(a) after “5(4)” insert “or (4A)(a)”;
- (b) in subsection (3) after “consult” insert “the Tynwald Auditor General, together with”.

*Personal Liability (Ministers, Members and Officers) Act 2007 (c.7)*

**12.** In section 3(2) (liability of designated persons) after paragraph (i) insert —

- “(ia) the person holding the office of Tynwald Auditor General;
- (ib) officers (permanent or temporary) serving on the staff of the Tynwald Auditor General;”.

IN THE KEYS

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# Tynwald Auditor General

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## A BILL

*to make provision for the appointment and functions of the Tynwald Auditor General; to amend the Audit Act 2006; and for connected purposes.*

Approved by the Council of Ministers for introduction in the House of Keys.

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MR. GAWNE

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OCTOBER 2010

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