
STATUTORY INSTRUMENTS

2005 No. 550

PUBLIC AUDIT, ENGLAND AND WALES

The Public Audit (Wales) Act 2004 (Transfer of Property, Rights and Liabilities of the Audit Commission for Local Authorities and the National Health Service in England and Wales) Order 2005

<i>Made</i>	- - - -	<i>4th March 2005</i>
<i>Laid before Parliament</i>		<i>10th March 2005</i>
<i>Coming into force</i>	- -	<i>1st April 2005</i>

Whereas the Secretary of State for Wales has consulted the Auditor General for Wales and the Audit Commission as to the terms of this Order;

And whereas the National Assembly for Wales has consented to this Order being made;

Now, therefore, the Secretary of State for Wales, in exercise of the powers conferred upon him by sections 68 of, and paragraphs 1 and 2 of Schedule 3 to, the Public Audit (Wales) Act 2004⁽¹⁾ hereby makes the following Order:

Citation, commencement, extent and interpretation

1.—(1) This Order may be cited as the Public Audit (Wales) Act 2004 (Transfer of Property, Rights and Liabilities of the Audit Commission for Local Authorities and the National Health Service in England and Wales) Order 2005 and shall come into force on 1st April 2005.

(2) In this Order —

“the Act” means the Public Audit (Wales) Act 2004;

“the transfer date” means 1st April 2005.

Transfer of property, rights and liabilities to the Auditor General for Wales on the transfer date: premises

2. Save as provided by paragraphs (1) or (2) of article 4, all property, rights and liabilities to which the Audit Commission was entitled or subject immediately before the transfer date in relation to the

premises listed in Schedule 1 to this Order, including any fixtures, fittings and trade fixtures at, in or on such premises, shall, on the transfer date, transfer to and vest in the Auditor General for Wales.

Transfer of property, rights and liabilities to the Auditor General for Wales on the transfer date: personal or other moveable property

3. Save as provided by paragraphs (1) or (2) of article 4, the following shall, on the transfer date, transfer to and vest in the Auditor General for Wales —

- (a) the property in, and all rights and liabilities to which the Audit Commission was entitled or subject immediately before that date in respect of, personal or other moveable property at, in or on any of the premises referred to in article 2;
- (b) the property in, and all rights and liabilities to which the Audit Commission was entitled or subject immediately before that date in respect of personal or other moveable property not included in sub-paragraph (a) and provided by the Audit Commission for the sole use of—
 - (i) those of its staff whose principal place of employment immediately before the transfer date was in Wales; or
 - (ii) those of its staff who are named in Schedule 2 to this Order.

Articles 2 and 3: common provisions

4.—(1) The property, rights and liabilities mentioned in article 2 or 3 shall not include any rights or liabilities of the Audit Commission under any contract for the supply, use or maintenance of information technology programmes.

(2) The liabilities mentioned in article 2 or 3 shall not include any liability to pay any sum, or do any thing, which the Audit Commission was liable to pay or do before the transfer date, or any liability in so far as it pertains to any period before the transfer date.

(3) The Auditor General for Wales shall reimburse the Audit Commission for any amounts expended by it before the transfer date in order to meet any liability mentioned in article 2 or 3, in so far as such liability pertains to any period after the coming into force of this Order.

(4) No right of pre-emption, forfeiture, reverter or similar right is to become exercisable as a result of a transfer of property under article 2 or 3.

Transfer of property, rights and liabilities to the Auditor General for Wales: liquid assets

5.—(1) This article applies where the Audit Commission, or an auditor appointed by it under section 3 of the Audit Commission Act 1998⁽²⁾, has received, at any time before the transfer date, fees for work to be undertaken by it or him in exercise of a function under Part 2 of the Audit Commission Act 1998 or Part 1 of the Local Government Act 1999⁽³⁾, for —

- (a) a person which, had the provisions of section 12 of the Act been in force at the relevant time, would have been a local government body in Wales for the purposes of the Act; or
- (b) a person which, had the provisions of section 60 of the Act been in force at the relevant time, would have been a Welsh NHS body for the purposes of the Act.

(2) In this article, “the excess fees” means such proportion of any fees mentioned in paragraph (1) as represents the value of work which has not been completed by the transfer date.

(3) The Audit Commission shall transfer to the Auditor General for Wales —

(2) 1998 c. 18.

(3) 1999 c. 27.

- (a) on 19th April 2005, a sum representing 80% of its estimate of the total amount of the excess fees; and,
- (b) on or before 30th June 2005, the balance of the excess fees.

6. The Audit Commission shall, on or before 31st December 2005, pay the Auditor General for Wales the sum of £758,000.

Transfer of staff to Auditor General for Wales

7.—(1) All the rights and liabilities (including the powers and duties) of the Audit Commission under or in connection with any contract of employment —

- (a) in force immediately before the transfer date, and
- (b) made between the Audit Commission and any person —
 - (i) whose principal place of employment immediately before the transfer date was in Wales; or
 - (ii) who is named in Schedule 2 to this Order;

shall transfer to the Auditor General for Wales on the transfer date.

(2) For the purposes of paragraph (1) above, the rights and liabilities, powers and duties of the Audit Commission in connection with any contract of employment to which paragraph (1) applies include any rights, liabilities, powers and duties under an agreement whereby the Audit Commission agrees to lend or advance monies to, or reimburse expenses incurred by, a member of its staff who is a party to such a contract of employment, or to lend or advance monies to a third party on behalf of such a member of its staff.

(3) The Audit Commission shall indemnify the Auditor General for Wales against any liability mentioned in paragraphs (1) or (2) in so far as that liability pertains to a period before the transfer date.

(4) The Auditor General for Wales shall pay the Audit Commission a sum representing a proportion, calculated in accordance with paragraph (5), of any amounts lent or advanced by it before the transfer date under an agreement mentioned in paragraph (2).

(5) The proportion referred to in paragraph (4) is the proportion of the amount lent or advanced by the Audit Commission that has not been repaid to the Audit Commission (disregarding any interest paid under the terms of the agreement) before the transfer date.

(6) Paragraph (1) does not apply to —

- (a) so much of a person’s contract of employment as relates to an occupational pension scheme within the meaning of the Pension Schemes Act 1993(4); or
- (b) any rights, powers, duties or liabilities under or in connection with any such contract and relating to such a scheme or otherwise arising in connection with a person’s employment and relating to such a scheme.

(7) For the purposes of paragraph (6), any provisions of an occupational pension scheme which do not relate to benefits for old age, invalidity or survivors shall be treated as not being part of that scheme.

8.—(1) This article is without prejudice to the generality of article 7(3).

(2) In this article, “the bonus” means the amount or amounts which would, but for the operation of article 7(1), have fallen to be paid by the Audit Commission —

(4) 1993 c. 48

- (a) in respect of the period beginning on 1st October 2004 and ending on 31st March 2005 (or any part thereof),
 - (b) to any person who was at the transfer date a party to a contract of employment to which article 7(1) applies,
 - (c) under the provisions (if any) of that person's contract relating to performance-related pay.
- (3) The Audit Commission shall, as soon as possible after the transfer date and in any event no later than 30th September 2005, pay the Auditor General for Wales the amount equal to the total of all the bonuses.

Creation in favour of Auditor General for Wales of interest over property retained by the Audit Commission

9.—(1) Subject to paragraph (2), the Auditor General for Wales is entitled to have access to, to copy and use, for whatever purpose, free of charge and in perpetuity, any intellectual property (in whatever form) created by or for the Audit Commission before the transfer date.

(2) Nothing in this Order entitles or authorises the Auditor General for Wales to grant (whether for consideration or not) any third party any right over, or right to use or copy, such intellectual property.

Transfer of, and access to, documents

10.—(1) The property in all documents (including documents in electronic form) in the possession or control of the Audit Commission and relating wholly to —

- (a) any property, rights and liabilities transferred to the Auditor General for Wales by articles 2, 3 or 7 of this Order, or
- (b) any person (other than the Audit Commission) who is a party to a contract of employment to which paragraph (1) of article 7 applies,

shall transfer to and vest in the Auditor General for Wales on the transfer date.

(2) The Auditor General for Wales shall be deemed to have given the Audit Commission an acknowledgement in writing of the right of the Audit Commission to the production of any document mentioned in paragraph (1), and to the delivery of copies thereof.

(3) The Audit Commission shall be deemed to have given the Auditor General for Wales an acknowledgement in writing of the right of the Auditor General for Wales to the production of any document (including a document in electronic form) in the possession or control of the Audit Commission and relating partly to —

- (a) any property, rights and liabilities transferred to the Auditor General for Wales by articles 2, 3 or 7 of this Order; or
- (b) any person (other than the Audit Commission) who is a party to a contract of employment to which paragraph (1) of article 7 applies.

4th March 2005

Peter Hain
Secretary of State for Wales

SCHEDULE 1

Article 2

1. Second floor offices at NEM House (now known as Deri House), 2/4 Park Grove, Cardiff, as demised to the Audit Commission by a lease made on 29 July 1994 between Hopcyn Property and Investment Company Limited and the Audit Commission and more particularly described in the first Schedule to that lease.

2. Ground and first floor offices at Deri House, 2/4 Park Grove, Cardiff, as demised to the Audit Commission by a lease made on 24 February 1998 between Hopcyn Property and Investment Company Limited and the Audit Commission and more particularly described in the first Schedule to that lease.

3. Two car parking spaces in a car park appurtenant to Deri House, 2/4 Park Grove, Cardiff, as shown on a plan attached to a lease made on 5 November 1998 between Hopcyn Property and Investment Company Limited and the Audit Commission.

4. Fourth floor offices at Deri House, 2/4 Park Grove, Cardiff, as demised to the Audit Commission by a lease made on 5 November 1998 between Hopcyn Property and Investment Company Limited and the Audit Commission and more particularly described in the first Schedule to that lease.

5. Two car parking spaces in a car park appurtenant to Deri House, 2/4 Park Grove, Cardiff, as shown on a plan attached to a lease made on 9 February 2000 made between Hopcyn Property and Investment Company Limited and the Audit Commission.

6. Fifth floor offices at Deri House, 2/4 Park Grove, Cardiff, as demised to the Audit Commission by a lease made on 9 February 2000 between Hopcyn Property and Investment Company Limited and the Audit Commission and more particularly described in the first Schedule to that lease.

7. Two car parking spaces in a car park appurtenant to Deri House, 2/4 Park Grove, Cardiff, as shown on a plan attached to a lease made on 5 February 2001 between Hopcyn Property and Investment Company Limited and the Audit Commission.

8. Third floor offices at Deri House, 2/4 Park Grove, Cardiff, as demised to the Audit Commission by a lease made on 5 February 2001 between Hopcyn Property and Investment Company Limited and the Audit Commission and more particularly described in the first Schedule to that lease.

9. Part First Floor Suite of Princess House, Princess Way, Swansea, as more particularly described in clauses 1(2) and 2 of a lease made on 25 June 2004 between Acton Vale (NTL) Limited and the Audit Commission.

10. First Floor Unit A, Parkway Business Centre, Deeside Industrial Estate, Sealand, Flintshire, as demised to the Audit Commission by a lease made on 30th May 2000 between F R Evans (Leeds) Limited and the Audit Commission.

SCHEDULE 2

Articles 3 and 7

Alan Rees Morris.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order transfers property, rights and liabilities from the Audit Commission for Local Authorities and the National Health Service in England and Wales (“the Audit Commission”), to the Auditor General for Wales, in order to enable him to carry out the new functions conferred on him by the Public Audit (Wales) Act 2004 (“the Act”). The most significant effect of the new functions is that the Auditor General for Wales (“the Auditor General”) will, from the coming into force of the Act, exercise most of the functions currently exercised in Wales by the Audit Commission. The Order is to take effect on 1 April 2005 (“the transfer date”).

Article 2 of, and Schedule 1 to, the Order deal with leasehold property.

Article 3 deals with moveable property.

Article 4 contains provisions which apply to both articles 2 and 3. Paragraphs (1) and (2) exclude certain rights and liabilities from the scope of the transfer. Paragraph (3) provides that the Auditor General will reimburse the Audit Commission for monies paid out by it before the transfer date to meet liabilities which will not crystallise, in whole or in part, until after that date.

Article 5 provides that fees received by the Audit Commission for audit and inspection work which has not been completed by the transfer date are to be handed over to the Auditor General. This transfer is to take place after the transfer date, partly on 19 April 2005, partly on or before 30 June 2005.

Article 6 provides for the transfer to the Auditor General of a portion of the Audit Commission’s reserves, corresponding to reserves built up from the Commission’s work in Wales. This transfer is likely to take place after the transfer date, and must do so by 31 December 2005.

Article 7, and Schedule 2, deal with the transfer of staff.

Article 8 is also concerned with staff. It provides for the Audit Commission to reimburse the Auditor General (by 30 September 2005) for the amount of any bonuses paid, after the transfer date, to those of its staff who transfer to the latter’s employ, where the bonus represents a reward for performance in the six-month period before that date.

Article 9 concerns intellectual property, such as training packages, created by or for the Audit Commission before the transfer date. It gives the Auditor General the right to use such property for an unlimited time, free of charge. However, the Auditor General will not be entitled to grant any third party rights over the property.

Article 10 contains provisions ensuring that documents wholly concerning property, rights and liabilities which are to transfer under the Order, will also transfer. In such cases a right of access for the Audit Commission is created. In cases where documents deal both with property etc. that is to transfer and with property etc. that will not, a right of access for the Auditor General is created.

Copies of the documents and plans listed in Schedule 1 to the Order may be inspected during office hours at the Audit Commission Estate Management Division, Westward House, Lilm Kiln Close, Stoke Gifford, Bristol BS34 8SR.